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DECLARATION  
FOR  
DC USA CONDOMINIUM

Date: March 26, 2008

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DECLARATION

FOR DC USA CONDOMINIUM

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DECLARATION  
FOR DC USA CONDOMINIUM

ARTICLE I  
CREATION; DEFINED TERMS

Section 1.1    Creation of the Condominium. Pursuant to the provisions of Chapter 19 of Title 42 of the District of Columbia Code (2001 edition, as amended) (the "Condominium Act"), DC USA Operating Co., LLC, a New York limited liability company (the "Declarant"), hereby submits to the Condominium Act the land described in Exhibit A hereto, located within the District of Columbia (the "Land"), together with the building thereon, having a street address of 3100 14th Street, N.W., Washington, D.C. containing approximately 490,000 square feet of retail and commercial area and together with two (2) levels of below grade parking facilities (the "Building"), all other improvements thereon, all easements, rights and appurtenances thereunto appertaining (including rights to and licenses for adjoining public rights of way), all of Declarant's rights in and to personal property and fixtures installed in or located within the Building directly related to the general operations of the Building and its common areas, all of Declarant's rights in contracts, warranties and other agreements related to the general operations of the Building and its common areas, and all licenses, permits, and certificates issued by any applicable governmental authority related to the general operations of the Building, the Land and their respective appurtenant areas (including, but not limited to, elevator permits, public space vault rental agreements, etc.) (the Land, the Building and all other such improvements, easements, rights and appurtenances being collectively referred to as the "Property"). The Land and the Building are shown on the Condominium Plats and Condominium Plans filed among the Condominium Records of the Office of the District of Columbia Surveyor in Condominium Book 67, at Page 17.

Section 1.2    Defined Terms. Except as otherwise defined in this Declaration or in the Bylaws, all terms used in the Condominium Instruments shall have the meanings specified in Section 42-1901.02 of the Condominium Act. Each of the following terms as used in this Declaration and in the Bylaws recorded contemporaneously herewith shall have the associated meaning:

(a)    "Affiliate" means (i) any Person that controls, is controlled by or is under common control with such Person, (ii) any managing member, general partner or Person authorized to act on behalf of such Person, or (iii) any Person that controls, is controlled by or is under common control with any Person described in the preceding clause (ii).

(b)    "Atrium Lobby" means that main lobby area of the Building providing general access to and through the Building to and from 14th Street, NW, as depicted and marked on the Plats and Plans, for all Unit Owners and the general public, including the multistory rotunda area, appurtenant elevator lobbies and related facilities including staircases.

(c)    "Bond Documents" means the Indenture of Trust, the Non-Arbitrage Certificate, the Bonds, the Bond Purchase Agreement, the TIF Note and any other agreements or instruments relating to the issuance of and security for the Bonds issued in conjunction with and related to the development and construction of Unit No. 3.

(d) "Bonds" means the tax-exempt Variable Rate Revenue Bonds (DC-USA Parking Garage Project) Series 2006, issued by the National Capital Revitalization Corporation to finance a portion of the costs of developing and constructing Unit No. 3 referred to in this Declaration and the Bylaws as being located within Unit No. 3, as such bonds may have been assumed, restated or substituted by the District of Columbia or any instrumentality thereof.

(e) "Bylaws" means the Bylaws recorded contemporaneously with this Declaration and as amended from time to time, which provides for the self-governance of the Condominium.

(f) "Business Day" means a calendar day that is any day, Monday through Friday, and is not a declared federal or District of Columbia legal holiday.

(g) "Common Elements" means all parts of the Condominium and rights attributable thereto, tangible and intangible, other than the Units, as more fully set forth in Article III of this Declaration captioned "Common Elements," and includes both "General Common Elements" and "Limited Common Elements."

(h) "Common Element Interest" means the undivided percentage interest of each Unit in the Common Elements as set forth in Exhibit B attached to and made a part of this Declaration, as amended from time to time in accordance with the provisions of the Condominium Act and this Declaration, which establishes each Unit's undivided percentage interest (i) in the General Common Elements, (ii) in the votes in the Unit Owners Association, and (iii) the allocation of responsibility for payment of General Expenses, unless a different allocation is provided for in this Declaration or in Schedule A.

(i) "Common Expenses" means and includes all sums incurred by the Unit Owners Association, and duly assessable to and against some or all of the Unit Owners by the Unit Owners Association, including without limitation (i) expenses of administration and operation, maintenance, repair or replacement of, and additions to, the Common Elements, including, but not limited to contributions to reserves for working capital and future expenditures as may be established from time to time by the Unit Owners Association and deposits, allowances or other amounts set aside by the Unit Owners Association for obligations of the Unit Owners Association, (ii) expenses of service delivery related to the Common Elements, such as but not limited to cleaning services, electrical services, water/sewer services, and heating, ventilation and air conditioning services, (iii) expenses declared Common Expenses pursuant to the Condominium Act, the provisions of this Declaration, or the Bylaws, (iv) expenses of administration and operation of the Condominium and the Unit Owners Association as an entity, (v) any and all vault rentals arising from the licensing or leasing of subterranean public space from the District of Columbia, (vi) sums due under any easement, covenant, or other document which encumbers the Common Elements, (vii) expenses of providing the services set forth in Section 5.5(a) of the Bylaws, (viii) insurance premiums and deductibles under the insurance set forth in Article 6 of the Bylaws or otherwise obtained from time to time by the Unit Owners Association, (ix) fees and expenses payable by the Unit Owners Association to the Managing Agent pursuant to the Management Agreement, (x) costs and expenses of environmental remediation related to the Land and the Building necessitated due to environmental contamination occurring after the recordation of this Declaration, (xi) any and all costs and

expenses incurred by the Unit Owners Association related to the provision of security services for the Building, including security for the two level parking facility contained within Unit No. 3 and its appurtenant Limited Common Elements as and when the Unit Owners Association provides such services, including but not limited to those costs and expenses arising from the installation, maintenance, repair and replacement of equipment, vehicles and facilities, and the hiring of vendors or personnel, all related to the provision of security in the Building and the operation of the security systems of the Building, including for the two level parking facility contained within Unit No. 3 and its appurtenant Limited Common Elements where the Unit Owners Association provides such services; (xii) any and all costs and expenses incurred by the Unit Owners Association pursuant to any responsibilities assigned to it under the Declaration of Parking Operations, including any monies due and owing the Unit Owners Association as repayment of any Shortfall Fundings by the Unit Owners Association and any fees due and unpaid to the Unit Owners Association thereunder by a Unit Owner, and (xiii) such other expenses as may be incurred by the Unit Owners Association on behalf of one or more of the Unit Owners in accordance with the provisions of this Declaration or the Bylaws including Schedule A. The term "Common Expenses" shall mean collectively General Expenses, Limited Common Element Expenses and Special Expenses. The term "Common Expenses" shall be deemed to exclude any costs and expenses associated with the operation, maintenance, repair or replacement of a Unit or any portion thereof, which costs and expenses shall be the sole responsibility of the Unit Owner of such Unit, except that as and when the Unit Owners Association provides security services for Unit No. 3, then the costs incurred by the Unit Owners Association shall be deemed a Common Expense, assessable to the Owner of Unit No. 3 as Special Expenses. Any costs and expenses not incurred by the Unit Owners Association for Common Elements, but instead paid for directly by one or more Unit Owners shall not be deemed a Common Expense, those costs and expenses not having been incurred by the Unit Owners Association. To the extent the Unit Owners Association does incur an expense or cost due to the failure of one or more Unit Owners to pay any cost or expense that is the responsibility of such Unit Owner(s), then the same shall become Common Expenses, but then allocable as Limited Common Element Expenses or Special Expenses as applicable to the Unit Owner(s) in question.

(j) "Condominium" means the condominium regime created pursuant to this Declaration and the Plats and Plans.

(k) "Condominium Instruments" means this Declaration, the Bylaws and the Plats and Plans, as the same may be amended from time to time.

(l) "Condominium Unit" means a Unit together with the Limited Common Elements appurtenant thereto, if any, and an undivided interest in the General Common Elements appertaining to that Unit.

(m) "Declaration of Parking Operations" means that certain Declaration of Parking Operations by Declarant as of the date of this Declaration, a memorandum of which is recorded immediately hereafter, as may be subsequently amended, related to the operation and maintenance of the parking garage located or to be located in and occupying Unit No. 3. In the event of a conflict between the Declaration of Parking Operations and this Declaration, this Declaration shall control. Additionally to the extent that, pursuant to the provisions of the

Declaration of Parking Operations, the Unit Owners Association incurs any costs and expenses pursuant to the provisions of the Declaration of Parking Operations, including any monies due and owing the Unit Owners Association as repayment of any Shortfall Fundings made by the Unit Owners Association and any fees due and unpaid to the Unit Owners Association thereunder by a Unit Owner, then all of those amounts shall be deemed Special Expenses, chargeable to the Unit Owner for whom the Unit Owners Association is acting under the Declaration of Parking Operations.

(n) "DC USA Deed" means that certain special warranty deed of conveyance given by the RLA Revitalization Corporation to Declarant, dated February 15, 2006, and recorded on February 16, 2006, as Instrument Number 2006021128 among the Land Records, granted in accordance with the LDA.

(o) "Declarant" means D.C. USA Operating Co., LLC, a New York limited liability company and shall also mean and refer to any Person who reserves or succeeds to any Special Declarant Right.

(p) "Declaration" means this instrument imposing a condominium regime on the Land and Building as the same may be amended and recorded from time to time.

(q) "Default Share" means generally the share of a Unit Owner for Common Expenses if not otherwise allocated pursuant to Schedule A or by Agreement of the Unit Owners, and specifically means, (i) as to General Expenses, the General Expenses Share of a Unit Owner, unless Schedule A provides otherwise, and (ii) as to Special Expenses and Limited Common Element Expenses, where more than one, but less than all Unit Owners bear responsibility for the cost and expense thereof, and either Schedule A does not indicate a share arrangement for that Common Expense to each benefited Unit Owner for such item, or the benefited Unit Owners cannot agree in good faith upon an appropriate and equitable sharing of that Common Expense within 10 days after the date that notice is given to the benefited Unit Owners of the cost or expense for such item, then the share determined by dividing such Unit Owner's General Expenses Share by the cumulative total of the General Expenses Shares of all Unit Owners having an interest in that Limited Common Element or share responsibility for those Special Expenses.

(r) "Effective Date" means the date that this Declaration is recorded among the Land Records.

(s) "Facilities Access Conditions" means those conditions specified in Section 4.3 of this Declaration related to the right of the Unit Owners Association or a Unit Owner to have access to Unit No. 1 or Unit No. 2, or any assigned Limited Common Elements thereto, as applicable, to undertake maintenance, repairs and replacement of Unit Facilities, repairs, replacements, and relocation of existing Service Facilities and to undertake the installation of new Service Facilities.

(t) "General Common Elements" means all Common Elements of the Condominium other than Limited Common Elements.

(u) "General Expense/General Expenses" means a Common Expense, but for those classified by the provisions of this Declaration or the Bylaws as a Limited Common Element Expense or Special Expense.

(v) "General Expenses Share" means the share of General Expenses that the Unit Owner of each particular Unit shall be responsible for based upon the Common Element Interest percentage attributable to that Unit pursuant to Exhibit B to this Declaration, except where Schedule A provides an alternate sharing arrangement for such General Expenses, and then the provisions of Schedule A shall govern and control the allocation of those General Expenses.

(w) "Identification Monuments" means signs, banners, monuments, posters and the like as more fully described in Section 4.12 of this Declaration.

(x) "Land Records" means the land records of the Office of the Recorder of Deeds of the District of Columbia

(y) "Limited Common Elements" means those portions of the Common Elements, more fully described in Section 3.3 of this Declaration, that are reserved for the exclusive use of at least one, but fewer than all, of the Units, including, without limitation, those Common Elements either identified as "Limited Common Elements" on the Condominium Plats or the Condominium Plans, as amended from time to time, or Schedule A, as amended from time to time, and for which the Unit Owner or Unit Owners shall have the sole rights and benefits.

(z) "Limited Common Element Expense/Limited Common Element Expenses" means a Common Expense incurred by the Unit Owners Association related to and arising from the use or control of, and entitlement to, a Limited Common Element; each benefited Unit Owner shall be responsible for its Limited Common Element Expenses Share of such Limited Common Element Expenses, for (i) all necessary or required repairs, maintenance and replacement of each Limited Common Element assigned to its Unit, and as well as necessary or required repairs, maintenance and replacement of any General Common Element due to the use or activity conducted in more than Unit or a Limited Common Element appurtenant to that Unit, (ii) obtaining all services, facilities, equipment and the like related to the use and/or occupancy with regard to each Limited Common Element for which it is/they are the beneficiary and (iii) costs and expenses of environmental remediation related to a Limited Common Element necessitated due to environmental contamination occurring after the recordation of this Declaration and caused by the action of the Unit Owner or Unit Owners, or any tenant, contractor or agent thereof, of the Unit or Units to which the Limited Common Element is assigned. Where there is only one such Unit Owner, then such Unit Owner shall be solely responsible, on behalf of the Unit Owners Association, for such Limited Common Element and the related Limited Common Element Expense; where there is more than one Unit Owner benefited, but fewer than all Unit Owners are benefited, then, unless the Unit Owners Association is otherwise charged with responsibility for such Limited Common Element as specified by a provision of this Declaration or the Bylaws (including Schedule A), all such benefited Unit Owners shall share responsibility for the Limited Common Element, and each Unit Owner shall be responsible for its Limited Common Element Expense Share of the Limited Common Element Expense therefore. Where expenses and costs related to or arising from the

use of any Limited Common Elements are paid for directly by the Unit Owner of the Unit or Unit Owners of Units to which those Limited Common Elements are assigned, and not by the Unit Owners Association, then such costs and expenses shall not be deemed Limited Common Element Expenses, nor Common Expenses generally of the Unit Owners Association.

(aa) "Limited Common Element Expenses Share" means, where there is more than one Unit Owner, but less than all Unit Owners benefited, a Unit Owner's share of a Limited Common Element Expense, determined by (i) first by Schedule A, (ii) second by allocation by and between the benefited Unit Owners in proportion to their respective utilization and benefit of such Limited Common Elements as determined by those benefited Unit Owners, where not addressed by Schedule A, and (iii) third where Schedule A does not address an allocation of such item and the benefited Unit Owners fail to come to agreement in good faith within 10 days after the date that notice is given to the benefited Unit Owners of the appropriate and equitable sharing of the cost or expense for such Common Expense, then the Default Share of each such Unit Owner.

(bb) "Managing Agent" means any duly qualified managing agent duly selected and employed by the Unit Owners Association to perform (i) property management duties and services for the General Common Elements and, if applicable, the Limited Common Elements, and (ii) duties and services related to the management and operation of the Condominium, as a condominium regime, and the Unit Owners Association, as a community association entity, all in accordance with the provisions of the Condominium Act, this Declaration or the Bylaws, as applicable.

(cc) "Management Agreement" means any management agreement between the Unit Owners Association and the Managing Agent related to the operation and administration of the Condominium.

(dd) "Mortgage" means any recorded deed of trust or mortgage for the benefit of a Mortgagee, which deed of trust or mortgage encumbers the legal title of a Condominium Unit.

(ee) "Mortgagee" means the lender under a Mortgage or bondholder under the Bonds secured under a Mortgage, where such lender, bondholder or trustee, pursuant to the terms of Article 8 of the Bylaws, has notified the Unit Owners Association of its status as the beneficiary under any Mortgage and has requested all rights under the Condominium Instruments and the Condominium Act, as applicable, provided that where there are multiple bondholders under the Bonds then the term "Mortgagee" shall mean the party that has the fiduciary responsibility for administering the Bonds.

(ff) "Par Value" means the number of points assigned to each Unit by this Declaration as set forth on Exhibit B attached to and made a part of this Declaration.

(gg) "Permitted Uses" means those uses of the Building provided and permitted by Section 1.4 of this Declaration.

(hh) "Person" means any individual, corporation, association, foundation, trust, limited liability company, partnership or other legal entity, including an association of unit

owners, or any combination thereof, that may individually or collectively be the owner or owners of a Condominium Unit.

(ii) "Plans" or "Condominium Plans" consist of the plans of the Building showing the location and boundaries of each Unit and of the Common Elements located in and on the Building and the Land, and related matters that are subjected to the regime of the Condominium, and any amendments thereto, made in accordance with the provisions of this Declaration, certified by a registered architect and/or registered engineer, licensed in the District of Columbia, and filed among the Condominium Records of the Office of the District of Columbia Surveyor.

(jj) "Plats" or "Condominium Plats" means the plat(s) of survey of the Land and related matters that are subjected to the regime of the Condominium, and any amendments thereto, made in accordance with the provisions of this Declaration, certified by a registered surveyor and/or registered engineer, licensed in the District of Columbia and recorded among the Condominium Records of the Office of the District of Columbia Surveyor.

(kk) "Plats and Plans" means collectively the Plats and the Plans, noted on the cover sheet thereof as being dated as March 25, 2008.

(ll) "Required Vote" shall mean a Standard Majority Vote, except that (i) in those cases where the Condominium Instruments require a Special Majority Vote, and then a Required Vote shall mean a Special Majority Vote, (ii) in those cases where the Condominium Instruments require the approval of all the Unit Owners, and then a Required Vote shall mean a Unanimous Vote, and (iii) in the approval of a line item in a proposed budget for Limited Common Element Expenses where the line item relates to a Limited Common Element assigned to Unit No. 3, then a Required Vote must include a vote of approval from Unit No. 3 Owner.

(mm) "Reserved Common Element" means a portion of the General Common Elements not required for the functioning of the Condominium in the interests of all Unit Owners and with respect to which the Unit Owners Association, pursuant to this Declaration or by the Bylaws, has granted or may in its discretion grant a license to one or more (but not all) Unit Owners for exclusive use by those Unit Owner(s).

(nn) "Right of Access Conditions" means those conditions specified in Section 4.1 of this Declaration related to the exercise of right of entry to a Unit or the Limited Common Elements assigned to that Unit by the Unit Owners Association, the Managing Agent, any other person authorized by the Unit Owners Association, the Managing Agent or a Unit Owner.

(oo) "Rules and Regulations" means the rules and regulations adopted from time to time by the Unit Owners Association in accordance with the Bylaws.

(pp) "Schedule A" means the Schedule A to the Bylaws, which allocates the principal responsibilities for operation, maintenance, repair and replacement of the Common Elements, as the same may be amended from time to time.

(qq) "Service Facilities" means those facilities identified in Section 4.3 of this Declaration.

(rr) "Shortfall Fundings" means those advances of funds made by the Unit Owners Association pursuant to and under the Declaration of Parking Operations Agreement, as more specifically defined in that Declaration, including accruing interest thereon.

(ss) "Special Declarant Rights" shall mean those rights reserved for the benefit of the Declarant as provided for in the Condominium Act and the Condominium Instruments, and shall include, without limitation, the following rights: (i) to complete improvements indicated on the Plats and Plans filed with this Declaration; (ii) to maintain models, sales offices, leasing offices, management offices, customer service offices, and signs advertising the Units; and (iii) to use easements through the Common Elements and the Units for the purpose of making improvements or performing repairs within the Condominium.

(tt) "Special Expense/Special Expenses" means a Common Expense, other than Limited Common Element Expense, incurred by the Unit Owners Association with regard to, and which are allocable and assessable to, one or more, but fewer than all of the Unit Owners which Common Expense as allocable and assessed in accordance with and as specifically described in this Declaration or the Bylaws (including Schedule A), including but not limited to any costs and expenses incurred by the Unit Owners Association arising from (i) any residual environmental clean up obligations identified prior to the Effective Date and any environmental conditions that occur prior to the Effective Date due to the actions of the Declarant (or its agents or contractors) in the development of the Building and use of the Property, which obligations and conditions shall be the responsibility of and shared prorata by Unit No.1 Owner and Unit No. 2 Owner in accordance with the area of their respective Units, (ii) any environmental hazard or condition occurring within in a Unit from and after the Effective Date that a Unit Owner fails to accept responsibility for and pay, (iii) any environmental hazard or condition occurring in or about the General Common Elements from and after the Effective Date caused by or the result of an action or failure to act of one or more but less than all Unit Owners, or by any the tenants, contractors or agents of such Unit Owner or Unit Owners, (iv) any monies advanced by the Unit Owners Association on behalf of a Unit Owner to satisfy the failure of that Unit Owner to pay any assessment of General Expenses and Limited Common Element Expenses levied by the Unit Owners Association, together with interest accruing on any monies so advanced as provided by the Bylaws, (v) any and all costs, expenses and fees as may be incurred from time to time by the Unit Owners Association pursuant to the Declaration of Parking Operations, including but not limited to any monies due and owing the Unit Owners Association as repayment of any Shortfall Fundings arising under the Declaration of Parking Operations, (vi) as and when the Unit Owners Association provides security services for Unit No.3, any and all costs and expenses incurred by the Unit Owners Association related to the provision of security services for Unit No. 3 and its appurtenant Limited Common Elements, including but not limited to those costs and expenses arising from the installation, maintenance, repair and replacement of equipment, vehicles and facilities related to the provision of security services for Unit No. 3, the operation of the security systems of Unit No. 3, the employment and supervision of security personnel and/or the hiring of any vendor contracted for by the Unit Owners Association to provide security services with regard to Unit No. 3, (vii) any and all costs and expenses duly incurred by the Unit Owners Association regarding the upkeep, maintenance and repair of any Unit, any Limited Common Element assigned thereto, and any easement area subject to a grant to a Unit Owner and appurtenant to its Unit, together in any case with any interest accruing thereon as provided by the Bylaws, and (viii) any and all costs and expenses duly incurred by the Unit Owners Association

regarding the upkeep, maintenance and repair of General Common Element incurred due to the use or activity conducted in or about a Unit, a Limited Common Element appurtenant to that Unit or any easement area granted to a Unit, together in any case with any interest accruing thereon as provided by the Bylaws. Notwithstanding the foregoing in subsection (i) above of this definition, any environmental condition determined to exist after the Effective Date as a result of an action of Declarant, its agents or contractors prior to the Effective Date shall be deemed a responsibility of the Unit Owners Association (and not solely Unit No. 1 Owner and Unit No. 2 Owner) if the condition as of the date of the action by the Declarant or others would not have been deemed an environmentally hazardous condition by a governmental agency prior to the Effective Date, such as by example determination that a material installed in the Building by the Declarant, and not then recognized by any governmental agency as hazardous prior to the Effective Date, is, after the Effective Date, determined by a governmental agency to be hazardous, and thus the Unit Owners Association shall be liable for any remediation of the same (rather than solely Unit No.1 Owner and Unit No. 2 Owner).

(uu) "Special Majority Vote" means a vote of the Unit Owners Association in which Unit No.1 Owner and Unit No. 2 Owner are in agreement to take an action, or as applicable not to take an action.

(vv) "Standard Majority Vote" shall mean the vote or written approval of an action of the Unit Owners by Unit No. 1 Owner and any other Unit Owner, whether actually cast in person or by proxy at a duly held meeting of the Unit Owners Association at which a quorum is present, or alternatively reflected in a written consent or communication from the participating Unit Owners where no meeting is held as is permitted by the Bylaws.

(ww) "TIF Note" shall mean that certain Tax Increment Financing Note approved by the Council of the District of Columbia In the "Tax Increment Revenue Bond DC-USA Project Emergency Approval Resolution of 2004" (R-15-653).

(xx) "Title Documents" shall mean any documents (i) declaring easements, (ii) imposing covenants, conditions and restrictions on a party or its property, which relate to the physical development and operation of the Building or a component part thereof, or (iii) both, in any case whether affecting or benefiting the Property, in whole or in part, created or existing outside of this Declaration, whether now existing or hereafter executed, and shall include, without limitation, the following documents, if and to the extent the following remain in effect as an encumbrance upon legal title to the Property or any portion thereof after the Effective Date: (A) the applicable covenants, conditions and restrictions arising under the Land Disposition and Development Agreement, dated as of January 17, 2003 by and between RLA Revitalization Corporation, an independent instrumentality of the District of Columbia ("RLA RC"), and Declarant, as recorded on February 16, 2006 as Instrument No. 2006021126, as amended to the date of this Declaration (the "LDA"); (B) the applicable covenants, conditions and restrictions arising under Special Warranty Deed, made effective as of February 15, 2006, from RLA Revitalization Corporation to Declarant, recorded February 16, 2006 as Instrument No. 2006021128, among the Land Records; (C) that certain Mortgagee Agreement dated as of February 15, 2006, by and among RLARC, Declarant and Citibank USA, Inc. and Citicorp North America, Inc. (the "Mortgagee Agreement"), dated February 15, 2006 and recorded February 16, 2006 as Instrument No. 2006021129; (D) that certain Deed of Trust, Assignment of Leases,

Security Agreement and Fixture Filing, dated February 15, 2006, recorded among the Land Records as Instrument No. 2006021130, benefiting Citicorp USA, Inc., unless and until subordinated or released of record among the Land Records; (E) that certain Indemnity Deed of Trust, Assignment of Leases, Security Agreement and Fixture Filing, dated February 15, 2006, recorded among the Land Records as Instrument No. 2006021132, benefiting Citicorp North American, Inc., unless and until subordinated or released of record among the Land Records; (E) that certain order of the District of Columbia Board of Zoning Adjustment ("BZA") in BZA Application No. 17232, effective June 10, 2005 (the "BZA Order"); and (F) such additional matters as may arise or be in the chain of legal title prior to the Effective Date and which relate to the physical development and operation of the Property. The term "Title Documents" shall specifically not be deemed to mean the DC USA Deed, including any of the performance obligations thereunder, and any deed of conveyance to any Unit in the Condominium and any of the performance obligations thereunder.

(yy) "Unanimous Vote" means a vote requiring the agreement of all Unit Owners as to the action proposed.

(zz) "Unit" means a unit as defined by the Condominium Act, as separately described in Article II of this Declaration and as depicted on the Plats and Plans, and in any amendment to this Declaration and/or the Plats and Plans. Furthermore, where in this Declaration, in the Bylaws or on the Plans, a Unit is referred to by a specific Unit number as the same appears in the Common Element Interests Table set forth as Exhibit B attached to this Declaration and on the Plans, then the provisions of this Declaration and the Bylaws shall apply and be deemed to mean that identified Unit only (e.g. "Unit No. 1").

(aaa) "Unit Facilities" means any equipment and facilities serving a Unit that are located (i) within the boundaries of that Unit, but which may only be accessed through another Unit, or the Limited Common Elements or an easement area appurtenant to that other Unit, (ii) within any Limited Common Elements or easement area appurtenant to that Unit, where access can only be achieved through another Unit or Limited Common Element areas of another Unit, and (ii) within General Common Elements.

(bbb) "Unit Owner" or "Owner" means any Person capable of holding title to real property that owns fee simple title to a Condominium Unit, but does not include a Mortgagee, as such, unless and until such Mortgagee takes title to a Unit by foreclosure or process in lieu thereof. Furthermore, where in this Declaration and the Bylaws a Unit Owner is referred to as the Unit Owner of a specific Unit, then the provisions of this Declaration and the Bylaws shall apply and be deemed to give specific reference to that identified Unit Owner only (e.g. "Unit No. 1 Owner").

(ccc) "Unit Owners Association" means collectively all of the Unit Owners acting as a group in accordance with the provisions of the Condominium Act, this Declaration and the Bylaws. The Unit Owners Association shall be incorporated as a District of Columbia non-profit corporation.

Section 1.3 Name and Address of Condominium. The name of the Condominium is the "DC USA Condominium." The address of the Condominium is 3100 14th Street, N.W., Washington, D.C. 20010.

Section 1.4 Permitted Uses.

(a) Generally Unit No. 1 may be used for retail/commercial uses that would be found in a similar high quality, mixed use retail/commercial project, including without limitation retail, entertainment, recreational, service and restaurant uses, consistent with high quality urban development projects. In any case, only for those uses as are permitted by applicable law, including without limitation the District of Columbia Zoning Regulations, as the same may exist from time to time (the "Zoning Regulations"), the DC USA Deed and the Title Documents. Notwithstanding the foregoing should Unit No. 1 Owner elect to develop the Excess Development Rights within Unit No. 1 as provided for in and permitted pursuant to Section 2.7 of this Declaration, then Unit No. 1 Owner may use the portion of the Unit and the Building developed with the Excess Development Rights for uses as permitted by the Zoning Regulations. The use of Unit No. 1 for any use may only be undertaken, operated and maintained in accordance with and subject to the terms and conditions set forth in this Declaration, the Bylaws, or both and then only in accordance with applicable law, the DC USA Deed and the Title Documents, as applicable.

(b) Generally Unit No. 2 may be used only for a high quality, "big box" retail uses, and any retail/commercial uses that would be found in a similar high quality, mixed use retail/commercial project, including without limitation retail, entertainment, recreational, service and restaurant uses, consistent with high quality urban development projects, but in any case only those retail and accessory uses as are permitted by applicable law, including without limitation the Zoning Regulations, the DC USA Deed and the Title Documents. The use of Unit No. 2 for any use may only be undertaken, operated and maintained in accordance with and subject to the terms and conditions set forth in this Declaration, the Bylaws, or both and then only in accordance with applicable law, the DC USA Deed and the Title Documents, as applicable.

(c) Unit No. 3 may be used only for off-street vehicular parking purposes providing for and serving primarily the off-street vehicular and bicycle parking needs arising from the various Permitted Uses of each of Unit No.1 and Unit No. 2 as identified in Sections 1.4 (a) and (b) above, open to the public, and required to provide no less than one thousand (1,000) striped parking spaces and access thereto satisfying the requirements of the Zoning Regulations, and the ability to provide accommodations for attendant assisted parking for two hundred forty four (244) additional vehicles as required by the provisions of the BZA Order. No change in use or in the number of parking spaces required under the BZA Order may be made except with the approval of the Unit Owners Association by a Unanimous Vote, which approval may be only granted by the Unit Owners Association where (i) such a change in use would not cause the Building to violate applicable laws, including the Zoning Regulations, the DC USA Deed, the Title Documents, and the Declaration of Parking Operations, and (ii) the prior approval in writing from each Mortgagee of a Unit in the Condominium. The use of Unit No. 3 for off-street vehicular parking may only be undertaken, operated and maintained in accordance with and subject to the terms and conditions set forth in this Declaration, the Bylaws, the DC USA Deed,

the Title Documents, the Declaration of Parking Operations, or any or all of them, and then only in accordance with applicable law.

Section 1.5     Warranty as to the Common Elements and Any Unit; Transfer of Non-Real Estate Assets.

(a)     No warranty against structural defects in the Common Elements or in any Unit is given or made by the Declarant to any Unit Owner or to the Unit Owners Association; any warranty against structural defects otherwise available pursuant to the Condominium Act from Declarant is deemed specifically waived by the Unit Owners and the Unit Owners Association. By acceptance of a deed to a Unit from the Declarant, a Unit Owner will be deemed conclusively to have accepted such Unit without any statutory warranty as to structural defects.

(b)     Notwithstanding that no warranty is given or made by the Declarant pursuant to this Declaration by the Declarant, Declarant does hereby assign and transfer over (i) to the Unit Owners Association as to the General Common Elements (A) any warranties or performance guarantees made and given by third parties to Declarant as the developer or owner of the Property, (B) all personal property located upon the Land or within the Building owned by Declarant and used in connection with the General Common Elements, if any, and (C) all licenses and permits issued to or owned by Declarant relating to the General Common Elements, and (ii) to each Unit Owner as to its Unit and any Limited Common Elements appurtenant thereto (A) any warranties or performance guarantees made and given by third parties to Declarant as the developer or owner of the Property, (B) all personal property located within the Unit owned by Declarant and used in connection with such Owner's Unit or the assigned Limited Common Elements, if any, and (C) all licenses and permits issued to or owned by Declarant relating to such Owner's Unit or the assigned Limited Common Elements, if any.

ARTICLE II  
BUILDING ON THE LAND; UNIT BOUNDARIES

Section 2.1     Location and Dimensions of the Building. The location and dimensions of the Building on the Land are shown on the Condominium Plats.

Section 2.2     Units. The location of the Units within the Building and their dimensions are shown on the Condominium Plans. The Common Element Interests Table, attached as Exhibit B hereto, is a serial list of all the Units in the Condominium, each Unit's identifying designation and the Common Element Interest appurtenant to each Unit determined on the basis of Par Value.

Section 2.3     Unit Boundaries. The boundaries of each Unit are as follows:

(a)     Upper and Lower (horizontal) Boundaries of a Unit: The upper and lower boundaries of each Unit shown on the Plans are the following boundaries extended to intersections with the vertical (perimetric) boundaries:

(i) Upper Boundaries:

(A) Except as to Unit No. 1, the upper boundary of a Unit shall be the horizontal planes of the bottom surface of the structural slab of the ceiling of the uppermost floor of a Unit as that floor may exist at various levels in the Building; provided, however, that with respect to any portion of a Unit where there is an opening in the ceiling, then the upper boundary of that Unit at such location shall be deemed to be bounded by a plane extended horizontally and in a direct line across said opening, all as more fully depicted on the Plans.

(B) As to Unit No. 1, (i) for that portion of Unit No. 1 located physically below Unit No. 2, the upper boundary of the Unit shall be those horizontal planes at the bottom surface of the structural slab the upper surface of which is the lowest most floor of Unit No. 2 at various levels in the Building; provided, however, that with respect to any portion of Unit No. 1 below Unit No. 2, where there is an opening in the bounding structural slab, then the upper boundary of Unit No. 1 shall be deemed to be bounded by an extension of the horizontal plane of the surrounding boundary of Unit No. 1 in a direct line across said opening, but in no event above the lower boundary of Unit No. 2, (ii) for that portion of Unit No. 1 situated within Unit No. 3, the upper boundary shall be the horizontal planes of the bottom surface of the structural slab of the ceiling of the uppermost floor of that Unit as that floor may exist at various levels in the Building; provided, however, that with respect to any portion of that Unit where there is an opening in the ceiling, then the upper boundary of that Unit at such location shall be deemed to be the upper boundary of the portion of Unit No. 1 above, all as may be more fully depicted on the Plans, and (iii) for the remainder of Unit No. 1, there shall be no upper horizontal boundary to Unit No. 1.

(C) As to Unit No. 2, for that portion of Unit No. 2 situated within Unit No. 3 or within General Common Elements, the upper boundary shall be the horizontal planes of the bottom surface of the structural slab of the ceiling of the uppermost floor of that Unit as that floor may exist at various levels in the Building; provided, however, that with respect to any portion of that Unit where there is an opening in the ceiling, then the upper boundary of that Unit at such location shall be deemed to be the boundary of the portion of Unit No. 2 above, all as may be more fully depicted on the Plans.

(D) Any horizontal structural slab separating Units or separating a Unit from Common Elements shall be a General Common Element unless the Condominium Instruments shall

specifically provide otherwise, such as where elevator shaft penetrations exist for and of a Unit.

(ii) Lower Boundaries: The lower boundary of a Unit shall be those horizontal planes of the top surface of the undecorated structural floor slab of the lowest floor of a Unit at various levels in the Building, provided, however, that with respect to any portion of a Unit where a floor slab does not exist, then the lower boundary of that Unit shall be the extension horizontally of the surrounding lower boundary of the Unit in a direct line across said opening, all as more fully depicted on the Plans.

(b) Vertical (perimetric) Boundaries:

(i) Except as provided in Section 2.3(b)(ii) below with regard to any portion of Unit No. 1 located above the elevation of the surface of any roof slab of the Building as such elevations are fixed as of the Effective Date and depicted on Sheet 16 of 16 of the Plats and Plans, the vertical boundaries of each Unit shall be and are, as applicable: (A) as to any bounding walls, or portions thereof, that are exterior walls of the Building, the vertical planes of the interior surface of all exterior walls of the Building, including of any parking ramp, whether above or below grade, (any drywall or other type of finishing covering the interior surface of any exterior wall being deemed part of and within the Unit), provided that the exterior surface of doors, and window and window systems located from time to time at the ground floor level of the Building in the vertical walls that are the exterior walls of the Building bounding the Unit shall be deemed part of the Unit; (B) as to any bounding walls, or portions thereof, of a Unit that are not the exterior walls of the Building, then, (1) where there is wall board affixed, the vertical planes of the back surface of the wall board of any interior wall bounding a Unit, provided that if the bounding wall, or portion, thereof is a wall directly confronting the Atrium Lobby, then the bounding wall, or the portion thereof that confronts that Atrium Lobby shall be deemed part of the Unit, and the boundary of the Unit of those bounding walls or the applicable portion thereof shall be the exterior face of that exterior wall or the portion thereof that confronts the Atrium Lobby, (2) where there is not wall board affixed, then generally the vertical planes of exposed surface of the material that bounds and directly confronts the airspace within the Unit, except where otherwise noted on the Plans, such as with regard to any portion of Unit No. 1 located within the bounds of Unit No. 3, where the bounding walls shall be deemed part of Unit No. 1, and (3) where there are any doors, and window and window systems, then generally the vertical planes of the exterior surface of those doors, and window and window systems, provided that in regard to the glass enclosures and supporting systems bounding the General Common Element elevator lobbies located within Unit No. 3, then the bounding doors, and windows and window systems shall be deemed General Common Elements, and the boundary of Unit 3 shall be the exterior face of those enclosures and systems that directly confronts and faces into the air space of Unit No. 3. In each of the above, the boundary of a Unit shall be as those vertical planes are extended to intersections with each other and with the upper and lower horizontal boundaries of the Unit, and further provided that, in any case where there is no vertical wall bounding such Unit, the vertical boundary in such area will be the vertical boundary line separating such Unit from another Unit or from any Common Elements as such boundary line is determined by extending, in a direct line, that boundary line across said opening in a straight or level plane, all as more fully depicted on the Plans.

(ii) With regard to any portion of Unit No. 1 located above the elevation of the surface of any roof slab of the Building, as such elevations are fixed as of the Effective Date and depicted on Sheet 14 of 16 and Sheet 16 of 16 of the Plats and Plans respectively, the vertical boundaries of such portion of Unit No.1 shall be the property line of the Land, except that where such portion of Unit No.1 does not confront a property line of the land, then the vertical boundary of Unit shall be the extension directly upward of the vertical boundary of Unit No. 1 as the same is located below the roof slab of the Building, as the same is depicted on Sheet 12 of 16 and Sheet 14 of 16 of the Plats and Plans.

(c) Included as part of each Unit, except as otherwise noted below, are: (i) all equipment related to the exclusive use and operation of a Unit, including but not limited to air-conditioning and heating components serving only that Unit, whether located inside or outside of the designated boundaries of the Unit; (ii) as to Unit No. 3 only, all equipment, facilities and infrastructure related to the security system and operations of Unit No.3 and the two level parking facility situated therein; (iii) any power source exclusively servicing a Unit, and the energy source exclusively therefor (including any fuel storage tank), whether located inside or outside of the designated boundaries of a Unit; (iv) any elevators, escalators, and convenience staircases, together with related areas and facilities, whether located inside or outside of the designated boundaries of a Unit and serving only that Unit, and all equipment serving and supporting such elevator, escalator or convenience staircase serving that Unit, whether located inside or outside of the designated boundaries of a Unit; (v) any equipment, fixtures and ancillary movable items, such as but not limited to (A) shopping carts and cart corrals, (B) banners, art work, and display materials and (C) kiosks, carts, and the like, in any case and in each case of (A), (B) and (C) related to the use and operation of a Unit, located or positioned outside of the designated boundaries of a Unit; (vi) Identification Monuments pertinent to the Unit, wherever located, in the Common Elements; and (vii) subject to the following sentence, all space, interior partitions and other fixtures and improvements, including but not limited to Identification Monuments within the designated boundaries of a Unit. Subject to Section 2.3(d), if any chute, flue, duct, pipe, conduit, chase, wire, bearing wall or column, or any other apparatus serving the Unit, lies partially inside and partially outside of the designated boundaries of that Unit, then any portions thereof serving only that Unit and located outside the designated boundaries of that Unit, shall be deemed a part of that Unit; any portions thereof wherever located serving more than one Unit shall be deemed Common Elements.

(d) For the purposes of this Section, the term "Unit" shall be deemed to include the floor slabs, ramp ways and other horizontal surfaces located within the designated boundaries of a Unit, but shall not be deemed to include any slab, or any horizontal supporting structure thereof that protrudes below the bottom surface of any slab that serves as demarcation of an upper or lower horizontal boundary of a Unit, including the structural slab of the Building serving as the roof of the Building, the structural slab of the Building that is the lowest foundation slab of the Building, a slab at any level between Unit No. 1 and Unit No. 3, and the portion of slab at any level that separates Unit No. 1 and Unit No. 2, all of which Unit boundary slabs and the horizontal supporting structure(s) thereof shall be deemed General Common Elements or Limited Common Elements as may be depicted on the Plan and Plans or identified as such on Schedule A, in any case subject to the provisions of Schedule A with regard to the responsibilities of individual Unit Owners therefore, including the costs related thereof. For the purposes of this Section, the term "Unit" shall not be deemed to include, as applicable, (i) any

vertical supports of the Building, including columns, whether part of any bounding walls of a Unit, or not, (ii) the space between the back surfaces of any bounding walls separating adjoining Units, (iii) any building systems of any kind and nature serving more than one Unit, notwithstanding that same maybe located within the designated boundaries of a Unit, and (iv) as to Unit No.1 only, the portion of any roof of the Building, as such roof exists as of the Effective Date, within the vertical boundaries of Unit No. 1, shall be deemed a General Common Element. The designation of any slab or portion thereof as a boundary slab to a Unit and thus a General Common Element is not intended to modify the allocation of responsibility and costs/expenses thereof of a Unit Owner as specified in Schedule A.

(e) Where this is a conflict between the location of a boundary of a Unit as would be fixed pursuant to the provisions of this Section 2.3 of the Declaration and the depiction of that Unit on the Plats and Plans, the location of a Unit as fixed pursuant to the provisions of this Section 2.3 shall be controlling.

Section 2.4 Operation, Maintenance, Repair and Replacement Responsibilities of a Unit. Notwithstanding the description of the boundaries of each Unit, the provisions of the Bylaws, including Schedule A thereto, shall govern the division of operation, maintenance, repair and replacement responsibilities of Units and Common Elements among Unit Owners and between each Unit Owner and the Unit Owners Association, as well as the consequent sharing of General Expenses or Limited Common Element Expenses. Generally however, and except as provided by Schedule A, (i) the Unit Owners Association shall have responsibility to undertake construction, operation, maintenance, repair and replacement of any General Common Elements located within or serving as the boundaries of a Unit, (ii) a Unit Owner shall be solely liable for undertaking construction, operation, maintenance, repair and replacement of the furnishings, fixtures, equipment and interior improvements and betterments of its Unit, including the cost and expenses thereof, and (iii) the Unit Owner of a Unit or Unit Owners of Units to which Limited Common Elements are assigned thereto shall be solely liable for undertaking construction, operation, maintenance, repair and replacement of the furnishings, fixtures, equipment and interior improvements and betterments of those Limited Common Elements, including the cost and expense thereof, unless the same are specifically identified as the responsibility of the Unit Owners Association, or another Unit Owner pursuant to this Declaration or the Bylaws, including Schedule A. Each Unit Owner shall operate, maintain and repair its Unit, and each Unit Owner or group of Unit Owners shall operate, maintain and repair the Limited Common Elements assigned thereto, in a high quality condition, comparable to what would be found from time to time in comparable high quality retail/commercial developments in the Washington, D.C. metropolitan area. Each Unit Owner shall periodically refurbish its Unit and see to the refurbishment of the Limited Common Elements assigned thereto, or as applicable replace operating equipment for its Unit and see to the applicable replacement of operating equipment related to such Limited Common Elements so as to maintain such standard as to both the Unit and those Limited Common Elements.

Section 2.5 Relocation of Boundaries Between Units and Subdivision of Units. Each of Unit No. 1 and Unit No. 2 may be legally subdivided by its applicable Unit Owner subject to obtaining the approval of any affected Mortgagee of the Unit, and upon giving prior notice to the other Units and Unit Owners Association of the intent to undertake the same. Unit No. 3 may not be subdivided by its Unit Owner without the prior approval in writing from all Unit Owners and each Mortgagee of a Unit. The unit boundaries between or among any of Unit No. 1, Unit No. 2 and Unit No. 3 may not be relocated without the prior approval in writing from all affected Unit Owners, each affected Mortgagee of the Unit(s) involved and the Unit Owners Association by Standard Majority Vote.

(c) Where a subdivision or boundary relocation is permitted, an amendment to this Declaration shall be entered into by the affected Unit Owners and the Unit Owners Association to effect any Unit subdivision or boundary relocation and thereafter such amendment shall be recorded by the Unit Owners Association as provided in Section 42-1902.25 or Section 42-1902.26 of the Condominium Act, among the Land Records, and, if appropriate, an amendment to the Plans which shall be similarly prepared and filed with the Office of the Surveyor of the District of Columbia, all at no expense to the Unit Owners Association.

Section 2.6 Establishment of a Subordinate Condominium Regime within a Unit.

(a) Subject to the Title Documents, and the Declaration of Parking Operations where applicable, each of Unit No. 1 Owner and Unit No. 2 Owner may establish a subordinate condominium regime within its Unit, provided that the same does not cause the Building to become in violation of any applicable provisions of the Zoning Regulations, and undertaking the establishment of a subordinate condominium regime within its Unit shall not require the prior approval of the Unit Owners Association so long as undertaking the same would not impose additional material and substantive obligations on the Unit Owners Association or alter the Common Element Interest appurtenant to any Unit. If it can reasonably be demonstrated and determined that additional material and substantive obligations would be imposed upon the Unit Owners Association as a result of the establishment of the subordinate condominium regime or there would be an alteration of the Common Element Interest allocation to any Unit, then the prior approval of the Unit Owners Association shall be required by a Unanimous Vote.

(b) Subject to the Title Documents and the Declaration of Parking Operations, Unit No. 3 Owner may establish a condominium regime within Unit No. 3, provided that (i) the same does not cause the Building to become in violation of any applicable provisions of the Zoning Regulations, and (ii) the approval of the Unit Owners Association is obtained by the Unanimous Vote prior to the establishment of a subordinate condominium regime within Unit No. 3.

(c) Where a Unit Owner has satisfied the conditions to establishment of a subordinate condominium regime within its Unit as described in subparagraphs (a) or (b) of this Section as applicable, and thereafter proceeds to so establish a condominium regime within its Unit, that Unit Owner shall provide notice thereof to the Unit Owners Association at such time as such a regime is duly established in accordance with the Condominium Act. Any Unit in which a subordinate condominium regime is established shall remain for all purposes a single Unit of the Condominium, with the Common Element Interest specified herein. That is, the vote

of such Unit shall thereafter be exercised by the unit owners association for the condominium regime established within such Unit and not by the individual unit owners of units in any condominium established within that Unit. Further, any and all Common Expenses and other expenses payable by such Unit shall be an obligation of the unit owners' association in such subordinate condominium regime. The Unit Owners Association shall incur no costs related to either the establishment or the continuation thereafter of a condominium regime within any of Unit No. 1, Unit No. 2, or Unit No. 3, all of the same being borne by the Unit Owner, or its successors or transferees thereof, that has undertaken to establish a condominium regime within its Unit. Upon the establishment of a subordinate condominium regime within a Unit, the Unit Owners' Association shall be a "master association" as defined in Section 42-1903.18 of Condominium Act.

Section 2.7    Development Rights/Expansion of Building.

(a)    Entitlement to Excess Development Rights. Any gross floor area attributable to Land pursuant to the Zoning Regulations from time to time (as the term "gross floor area" is defined in the Zoning Regulations) not consumed by and incorporated in the Building as of the date of this Declaration shall be deemed excess gross floor area appurtenant to the Land and attributable to and vested with Unit No. 1 ("Excess Development Rights").

(b)    Development Above The Building. If Unit No. 1 Owner desires to develop any or all of the Excess Development Rights within Unit No. 1, the Unit No. 1 Owner shall review the concept and plans for the same with the Unit Owners Association. Approval by all Unit Owners shall be required, provided that so long as the proposal for development of the Excess Development Rights (i) would not be expected to materially and adversely impact the structural integrity of the Building, (ii) would not be expected to impose any material or significant burden on the Building's operating systems, (iii) would be for uses that are permitted by the applicable provisions of the Zoning Regulations and not incompatible with the Permitted Uses and the DC USA Deed, (iv) would not cause a violation of the provisions of any of the Title Documents, (v) would not put Unit No. 3 in non-compliance with or in violation of the Zoning Regulations if Unit No. 3 is required to provide parking accommodations for any uses of the additional development using the Excess Development Rights, (vi) would not require Unit No. 3 to provide occupants of the additional development using the Excess Development Rights if the granting of such parking rights could reasonably be expected to have an adverse impact the operations of Unit No. 3 as primarily a parking facility for the retail/commercial uses of Unit No.1 and Unit No. 2, (vii) would not cause Unit No. 3 to incur costs and expenses that would not be compensated with regard to the operation of the parking facilities located within Unit No. 3, (viii) is architecturally compatible with the Building, and (ix) all rights to easements granted to and appurtenant to Unit No. 3 as to the roof of the Building within Unit No. 1 are preserved, provided the same may be duly relocated to any higher roof elevation of the Building located within Unit No. 1, at no cost to Unit No. 3 Owner, then neither the Unit Owners Association nor any Unit Owner may unreasonably withhold its consent to or condition its approval of the proposed development of the Excess Development Rights within Unit No. 1 as requested by Unit No. 1 Owner in accordance with this Section 2.7. The Unit Owners Association on behalf of each Unit Owner, at no cost to the Unit Owners Association or any other Unit Owner, shall cooperate in the preparation of and thereafter fully support any request for relief requested by Unit No. 1 Owner under then applicable zoning regulations of the District of Columbia and then

applicable construction codes of the District of Columbia to permit development, and the subsequent use of the Excess Development Rights within Unit No. 1. As appropriate, amendments to several of the Condominium Instruments as the same then exist and are effective shall be prepared by Unit No. 1 Owner to reflect the physical additions to the Unit and the Building arising from the approved development of the Excess Development Instruments, and any changes in the relationship of the Unit Owners resulting from such development.

### ARTICLE III COMMON ELEMENTS

Section 3.1 General Common Elements. The locations of the General Common Elements are shown on the Plats and the Plans and consist of the entire Condominium, other than the Units and Limited Common Elements. The General Common Elements include, without limitation, the following:

- (a) The Land;
- (b) All foundations, foundation walls, columns, girders, beams, floor slabs and supports of the Building whether the same are located within or outside of a Unit, except those horizontal structural elements identified in Section 2.3 as part of a Unit;
- (c) All exterior walls and facings of the Building and any other exterior surfaces and fixtures attached to such walls, facings and surfaces (including without limitation the structural grid wall) and all partitions separating Units, except to the extent the portion thereof is included as part of a Unit or identified as Limited Common Elements;
- (d) The mechanical, electrical, telephone/telecommunications, maintenance, trash and other rooms located in the Building to the extent not included as part of a Unit or identified as Limited Common Elements;
- (e) All mechanical, electrical, telephone/telecommunications and plumbing equipment and related facilities, including but not limited to all pumps, pipes, wires, cables, conduits and other apparatus relating to the water distribution, power, light, telephone, gas, sewer, heating, air conditioning and plumbing systems located in and/or serving the Building and not included as part of a Unit or identified as Limited Common Elements;
- (f) The roof slab, roofing materials and roof structures of the Building to the extent not identified as part of a Unit or identified as Limited Common Elements;
- (g) The entrances, vestibules, lobbies, reception spaces, common seating areas, elevator lobbies and all other hallways and areas located in or about the Condominium to the extent not identified as either part of a Unit or identified as Limited Common Elements, and specifically including any vertical enclosures thereof;
- (h) All furniture, fixtures and equipment (i) purchased, and installed or located in General Common Element areas of the Condominium by the Declarant as of the Effective Date and not identified as a Limited Common Element or part of a Unit, or as the personal property of any Unit Owner, and (ii) purchased or otherwise acquired as of and after the

Effective Date by the Unit Owners Association for installation in the General Common Element areas of the Condominium, but in any case specifically excluding as General Common Elements (A) property of Declarant, including but not limited to signage, acquired as and related to its ownership of any Unit located within or attached to the General Common Elements, (B) property of any of tenant of any Unit, including but not limited to signage, acquired as and related to its leasing of any space in any Unit, which may be located within or attached to the General Common Elements, (C) furniture, materials and equipment belonging to any contractor of the Declarant, any Unit Owner or any tenant of any Unit Owner that is located within or attached to the General Common Element areas of Condominium, and (D) any merchandising kiosk, cart or similar feature of any Unit Owner, or a tenant thereof that is permitted to be located in, on or about General Common Element areas pursuant to the Rules and Regulations, such property, furniture, materials and equipment being deemed part of any Unit, identified as a Limited Common Element appurtenant to the Unit to which it is associated, or the personal property of a Unit Owner or its tenant/occupant of such Unit.

(i) The elevators and elevator shafts, escalators and escalator machinery areas, and in each case related equipment thereto located within or that serve the General Common Elements or all Units, excluding, specifically however (i) elevators and elevator shafts, and escalators and escalators machinery areas and pits identified on the Plan as within Limited Common Elements, and (ii) elevators, escalators and cartolaters that are located within the boundaries of any Unit;

(j) The stairwells and stairs of the Building, including fire egress stairs, but excluding stairwells and stairs identified as Limited Common Elements and convenience or other stairs situated within the boundaries of a Unit;

(k) All exterior entrance doors and windows located in and on the Building, except those identified as Limited Common Elements or included as part of a Unit;

(l) Storage spaces in the Building not otherwise identified as Limited Common Elements or located within the boundaries of a Unit;

(m) Off-street loading facilities serving the Building, as well as rights to other off-street loading facilities, except those located within the boundaries of a Unit or those identified as Limited Common Elements;

(n) Rights to subterranean vaults located within public rights of way, or portions thereof, adjacent to the Land, if any;

(o) Landscaping features located in the General Common Elements of the Condominium including but not limited to walkways, planters, gardens, furniture and lighting, and any landscaping features within areas of the Building and the Land marked as the General Common Elements of the Condominium, whether interior or exterior to the Building;

(p) All rights and entitlements in and to adjacent public rights of way that accrue to the Land;

(q) Easements, covenants, restrictions and similar agreements benefiting or burdening the Property, except to the extent identified as Limited Common Elements or as part of a Unit;

(r) Except as may be otherwise set forth herein, all apparatus and installations now located upon or hereinafter constructed or installed in the Building or on the Land for common use, or necessary or convenient to the existence, the common maintenance or safety of the Building or the Land;

(s) All permits, licenses, approvals, and similar governmental actions related to the use and operation of the Building (e.g., elevator licenses, etc.), but specifically excluding those related to the use and occupancy of a specific Unit or portion thereof;

(t) Such other areas or elements of the Property identified as General Common Elements on Schedule A; and,

(u) The security system and operations related to the General Common Elements of the Building (and specifically excluding those related to security services provided to Unit No. 3).

### Section 3.2 Reserved Common Elements.

The Unit Owners Association shall have the power in its discretion from time to time to grant revocable licenses in designated portions of the General Common Elements to a Unit Owner as Reserved Common Elements. A Standard Majority Vote of the Unit Owners Association shall be required before such designation and granting of a license may be made, provided that where such designation (a) would reasonably be expected to materially and adversely deprive any Unit Owner, which is not the intended licensee of the Reserved Common Elements, of any material benefit that all Unit Owners then enjoy with regard to the portions of the General Common Elements proposed to be designated as Reserved Common Elements, and/or (b) would reasonably be expected to impose a greater financial obligation for General Expenses or other burdens upon any Unit Owner that is not the beneficiary of the license for Reserved Common Elements than would have been the case if such designation had not occurred, then a Unanimous Vote shall be required to designate and then license Reserved Common Elements to one or more, but less than all Unit Owners. Any Unit Owner that is granted rights to Reserved Common Elements shall indemnify and hold harmless the Unit Owners Association from any claims, losses, expenses and costs related to the use of the same. The Unit Owners Association may establish a reasonable charge to the Unit Owner of the Unit to which the Reserved Common Elements are licensed for the use and maintenance thereof. The designation by the Unit Owners Association of any General Common Elements as Reserved Common Elements shall not be construed as a sale or disposition of the General Common Elements. Any Common Expenses directly attributable to the operation of General Common Elements that are designated as Reserved Common Elements shall be deemed Special Expenses and shall be borne solely by the benefited Unit Owner or if there is more than one benefited Unit Owner then by each Unit Owner at its Default Share, unless there is agreement among those Unit Owners otherwise. Any income generated by the Unit Owner through the use of Reserved

Common Elements licensed to it shall belong solely to that Unit Owner or those Unit Owners, as applicable.

Section 3.3 Limited Common Elements. Limited Common Elements are those Common Elements that are identified on the Plats and the Plans, or are otherwise described in this Section 3.3 as Limited Common Elements for the benefit of one or more, but less than all Unit Owners, and shall include but are not limited to the following:

(a) Areas of any roof of the Building identified on either the Plats and Plans or in Schedule A as Limited Common Elements, as well as any roof improvements and roof structures appurtenant to one or more but less than all Units;

(b) The mechanical, electrical, telephone/telecommunications and maintenance rooms and other areas located in, on or about the Building to the extent not included as part of a Unit, and identified as Limited Common Elements on the Plats and Plans or in Schedule A;

(c) Any mechanical, electrical, HVAC, telephone/telecommunications, antennae and related equipment, and plumbing equipment and related facilities, including but not limited to all pumps, pipes, wires, cables, conduits and other apparatus relating to the water distribution, power, light, telephone, gas, sewer, heating, air conditioning and plumbing systems located in and/or serving fewer than all Units and not included as parts of a Unit, and areas related thereto identified as Limited Common Elements on the Plats and Plans or in Schedule A;

(d) Areas of the Common Elements, vertically and horizontally, as depicted or identified on the Plats and Plans or on Schedule A, where Identification Monuments (as defined in Section 4.12 of this Declaration) may be installed and maintained by a Unit Owner (or a tenant/occupant of a Unit of such Unit Owner);

(e) Any off-street loading facilities wherever located, including but not limited to roll down doors and other facilities and equipment marked on the Plats and Plans or noted in Schedule A as Limited Common Elements;

(f) Elevators, elevator machinery areas and elevator shafts and pits, escalators, escalator machinery areas and pits, and cartolator machinery areas and pits, in each case together with related equipment that serve one or more, but less than all Units of the Condominium as identified on the Plats and Plans or in Schedule A as Limited Common Elements.

(g) The exterior surface of any such elevator door and the exterior surface of the framework of the elevator door of any Common Element elevator that opens directly into a Unit, which in each case shall be deemed Limited Common Elements of that Unit.

(h) Areas within the Common Elements identified on or noted in the Plats and Plans, Schedule A, or approved by the Unit Owners Association pursuant to the applicable provisions of the Bylaws, where merchandising kiosks, carts or similar features and vending opportunities, and supporting facilities, banners and equipment may be located by a benefited Unit Owner or a tenant thereof.

(i) All furniture, fixtures and equipment (i) purchased, and installed or located in Limited Common Element areas of the Condominium by the Declarant as of the Effective Date, and not identified as part of a Unit or as the personal property of any Unit Owner, and (ii) purchased or otherwise acquired as of and after the Effective Date by the Unit Owners Association for installation in the Limited Common Element areas of the Condominium, but in any case specifically excluding as Limited Common Elements (A) property of Declarant, including but not limited to signage and artwork, acquired as and related to its ownership and use of any Unit, located within or attached to the Limited Common Elements, (B) property of any tenant of any Unit, including but not limited to signage, acquired as and related to its leasing of any space in any Unit, which may be located within or attached to the Limited Common Elements, (C) furniture, materials and equipment belonging to any contractor of the Declarant, any Unit Owner or any tenant of any Unit Owner that is located within or attached to the Limited Common Element areas of Condominium, and (D) any merchandising kiosk, cart, furniture, banner, materials, and equipment of any Unit Owner, or a tenant thereof that is permitted to be located in, on or about areas of Common Elements, such property being deemed part of any Unit or the personal property of a Unit Owner or its tenant/occupant of such Unit.

(j) To the extent not part of a Unit, all entrance doors, and window and window assemblies located in and on vertical boundaries of that Unit, whether fronting on the exterior of the Building or on interior General Common Element areas, but specifically not including any entrance door and window/window assemblies located on or about the exterior face of the Building fronting on, or providing ingress to or egress from the exterior of the Building to, the interior General Common Element areas of the Building, such as the Atrium Lobby;

(k) Landscaping features of any Limited Common Elements, including but not limited to walkways, planters, furniture and lighting; and

(l) Such other areas or elements of the Property identified as Limited Common Elements on Plats and Plans or in Schedule A.

Section 3.4 Allocation of Parking Rights. Each of Unit No. 1 Owner and Unit No. 2 Owner, and the permittees, licensees and invitees of each, shall be entitled to use on a non-exclusive basis with the Unit No. 3 Owner and its permittees, licensees and invitees, the parking accommodations in the public parking garage facility located within Unit No. 3, all in accordance with and subject to the provisions of the Declaration of Parking Operations. As a public parking garage facility, Unit No. 3 Owner shall make available to each of Unit No. 1 Owner and Unit No. 2 Owner no less than the amount of off street parking spaces required by the Zoning Regulations for the Permitted Uses in Unit No. 1 and Unit No. 2.

#### ARTICLE IV EASEMENTS, COVENANTS AND RESTRICTIONS

In addition to the easements created by Sections 42-1902.16 of the Condominium Act and by the Title Documents, the Condominium shall be subject to the following easements, covenants, conditions, limitations and restrictions:

Section 4.1 Easement for Access.

At no expense to the benefited Person:

(a) The Unit Owners Association, any of its officers, the Managing Agent and any other person authorized by the Unit Owners Association, and any of its officers or the Managing Agent shall have the right of access at any time to any Limited Common Element or any Unit as provided in Section 42-1903.07 of the Condominium Act and Section 5.8 of the Bylaws, subject to compliance with the Right of Access Conditions. The term "Right of Access Conditions" shall mean that access is gained and used in a manner that (i) does not materially and substantively interfere with the normal business operations of a Unit Owner, or its tenants or occupants, except in the case of an emergency or where applicable law imposes restrictions or conditions, and (ii) except with regard to activities conducted pursuant to the exercise of rights provided for in Section 4.3(f) of this Declaration, is had only during normal operating hours of the Unit, or of any tenant or occupant thereof.

(b) Each of Unit No. 1 Owner and Unit No. 2 Owner shall have a right of access at any time in, to and through Unit No. 3 to gain access to any portion of its Unit and any Limited Common Elements assigned to its Unit and to any easement area granted to such Unit Owner, in each case which are located within, or to which access may be gained only through, Unit No. 3, subject as appropriate to the giving of reasonable prior notice to Unit No. 3 Owner where access to such portion of a Unit, any Limited Common Element assign to such Unit or easement area can only be obtained through an area of Unit No. 3 under restricted access or control, such as a management office of any operator of the parking garage facility located in Unit No. 3.

(c) Unit No. 3 Owner, its agents and contractors shall have a right of access to and through each of Unit No. 1 and Unit No. 2 to gain access to any (i) Limited Common Elements assigned to Unit No. 3, and (ii) any easement area granted to Unit No. 3 Owner, which are located within, or may only be reasonably accessed through Unit No. 1 or Unit No. 2, as applicable, subject to satisfaction of the Right of Access Conditions with regard to the affected Unit.

(d) Unit No. 1 Owner, it agents and contractors shall have a right of access to and through Unit No. 2 to gain access to any Limited Common Elements assigned to Unit No. 1 and located within, or may only be reasonably accessed through Unit No. 2, subject to satisfaction of the Right of Access Conditions with regard to the affected Unit.

(e) Unit No. 2 Owner, it agents and contractors shall have a right of access to and through Unit No. 1 to gain access to any Limited Common Elements assigned to Unit No. 2 and located within, or may only be reasonably accessed through Unit No. 1, subject to satisfaction of the Right of Access Conditions with regard to the affected Unit.

(f) The right of access afforded to a Unit Owner under (b), (c), (d) and (e) above of this Section 4.1 does not grant to such Unit Owner a right to physically occupy any portion of the Unit of another Unit Owner, but is intended to afford a Unit Owner only a right of

passage to and from the portion of its Unit of the Limited Common Elements assigned to such Unit for which access may only be reasonably obtained through the Unit of another.

Section 4.2 Unit Owners Association's Right to Act under and Grant, Modify, Amend and Terminate Easements, Restrictions and Covenants.

(a) The Unit Owners Association shall have the exclusive right on behalf of all Unit Owners, subject to obtaining the Required Vote hereunder, (i) to grant, modify, amend and terminate, subject to and in accordance with the applicable provisions of the Bylaws and with the approval of each Mortgagee, (A) easements, restrictions, covenants and similar agreements affecting the Property, or any portion thereof, including, without limitation to those that may also affect or pertain to any other property in Square 2674 in the District of Columbia, to which the Unit Owner Association is a party and not any one or more of the Unit Owners individually, and (B) the Title Documents, except the LDA which may only be amended or modified in accordance with the terms thereof by the parties thereto, (ii) to cast all votes or take other actions under any of the agreements referred to in item (a) above of this Section on behalf of the Unit Owners that the Unit Owners Association reasonably believes are not inconsistent with the best interest of the Condominium and the Unit Owners collectively, subject as applicable to obtaining a Required Vote, and (iii) to apply for or voluntarily agree to accept, subject to and in accordance with the applicable provisions of the Bylaws, any governmental relief, benefit or burden under (A) the Zoning Regulations, and (B) the Construction Codes of the District of Columbia (Title 12, DCMR) as amended (collectively the "Governmental Requirements"), where such relief or benefit, if granted, would not reasonably be expected to impose obligations or burdens upon the Unit Owners Association with regard to the Common Elements that would be greater or more burdensome than were those imposed upon the Unit Owners Association as of the Effective Date.

(b) Where a proposed grant, modification, amendment, exercise of termination, application, or acceptance would reasonably be expected to materially and adversely deprive a Unit Owner of any benefit to the Common Elements it otherwise then enjoys, or would impose a materially greater financial burden upon a Unit Owner for Common Expenses than would have been the case in either circumstance if the grant, modification, amendment, termination, application or acceptance did not occur, then the consent of all Unit Owners and all Mortgagees shall be required. In no event shall the Unit Owners Association have the authority to act on behalf of any Unit Owner in altering, modifying, terminating or otherwise changing any easement, restriction, covenant or similar agreement as to any individual Unit that may arise under any Title Document (including, without limitation, the LDA) or the DC USA Deed.

(c) Where a proposed grant, modification, amendment, exercise of termination, application, or acceptance would not reasonably be expected to materially and adversely deprive any Unit Owner of any benefit to any Common Element that such Unit Owner otherwise then enjoys, or would not impose a greater financial burden upon any Unit Owner for Common Expenses than would have been the case if the grant, modification, amendment, termination, application, or acceptance did not occur, and the provisions of each of Section 3.2 (b) and Section 3.2 (c) of the Bylaws do not apply, then only a Standard Majority Vote shall be required to approve the proposed grant, modification, amendment, exercise or termination, application or acceptance.

(d) If a proposed grant, modification, amendment, exercise of termination, application, or acceptance would require the consent of all Unit Owners in support of the action (whether pursuant to this Section or pursuant to the provisions of Section 3.2 (c) of the Bylaws as applicable, and the Required Vote is not achieved, then if the President-Treasurer believes in his or her reasoned opinion, after consultation with all Unit Owners, that the failure to take the action will (i) materially and detrimentally harm the Land or the Building, or the interests of the Unit Owners as a whole under such agreements, (ii) result in the failure to obtain or maintain utilities necessary for the operation of the Condominium, or (iii) result in the non-compliance of the Condominium, the Land or the Building with any applicable law or governmental requirement, then the President-Treasurer, notwithstanding the inability of the Unit Owners Association to achieve the consent of all Unit Owners in support of such action, may act in his or her reasonable discretion, to execute such agreements, cast such votes or take such actions as he or she deems necessary to the extent necessary to protect the interests of the Condominium and all of its Units Owners, provided that the President-Treasurer shall have made a good faith effort to identify and implement the alternative that in his/her reasoned opinion would be expected to be the least burdensome upon the Unit Owners collectively, and shall have obtained the approval of all Mortgagees.

(e) Provided the President-Treasurer duly undertakes his/her duties and proceeds as provided for in Section 4.2(d) above, then the Unit Owners shall accept such decision of the President-Treasurer as a due action by the Unit Owners Association. No action may be taken by the Unit Owners Association or the President-Treasurer however that would (i) interfere in any material and significant manner with the conduct of business in a Unit, (ii) increase the cost of conducting business within a Unit, without the consent of the affected Unit Owner, (iii) cause a default under any financing instruments securing or documenting any Mortgage, (iv) violate any Title Document, (v) cause any Unit Owner to violate any covenant, restriction or condition that may have been imposed upon that Unit Owner or the Unit of that Unit Owner by and through, directly or indirectly, the DC USA Deed, or (vi) cause a default under the Bond Documents or adversely affect the exemption from taxation of interest on the Bonds.

#### Section 4.3 Service Facilities/Unit Facilities.

(a) Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and other Utility Distribution Systems. Each Unit Owner shall have an easement, in common with the Unit Owners, of access and use, for the purposes of installation, maintenance, repair and replacement, of all pipes, wires, ducts, cables, conduits, public utility lines and all other utility distribution systems (individually a "Service Facility" and collectively "Service Facilities"), whether or not the same are Common Elements, and whether or not located in any of the other Units or in any Common Elements of the Property, to the extent that (i) any such Service Facility serves the Unit or is assigned as an Limited Common Element thereto of that Unit Owner or is necessary for service delivery to the Unit of that Unit Owner, and (ii) the use of and access to the same by the Unit Owner would not be materially and adversely detrimental to the Common Elements or to another Unit.

(b) Unit Related Operating Equipment and Systems.

(i) Unit No.1 Owner shall have an easement of access and use to install, locate, maintain, repair and replace from time to time Unit Facilities serving Unit No. 1 in and on Unit No. 3, provided the same would not and does not (A) materially and adversely impact the structure of the Building and/or the physical improvements located in Unit No. 3 belonging to Unit No. 3 Owner (or its agents or contractors), (B) materially and adversely interfere with the use and normal business operations of the parking garage located within Unit No. 3, unless the same is required to comply with a government directive, provided Unit No. 1 Owner uses diligent efforts to minimize any impact on the operations of Unit No. 3, and (C) preclude Unit No. 3 from providing at least 1,000 legal parking spaces in Unit 3 or making available attendant assisted parking accommodations for an additional 244 vehicles as required by applicable governmental approvals in place as of the Effective Date. Unit No.1 Owner shall also have the right in an emergency to have access and take such actions as might on a temporary basis be deemed to have a material or adverse impact on the improvements in Unit No. 3 or in the operations within Unit No. 3 in order to stabilize and address the identified emergency condition, provided Unit No. 1 Owner uses diligent efforts to minimize an impact on the improvements or operations of Unit No. 3. Penetration of any slab to locate pipes, chases, conduits and ductwork in the ordinary course may not be deemed work that materially and adversely impacts the structure of the Building, provided the same is done in accordance with applicable codes of the District of Columbia.

(ii) Unit No. 2 Owner shall have an easement of access and use in and on Unit No. 3 to install, locate, maintain, repair and replace from time to time Unit Facilities serving Unit No. 2 and any Limited Common Element assigned thereto located in and on Unit No. 3, provided the same would not and does not (A) materially and adversely impact the structure of the Building and/or the physical improvements located in Unit No. 3 belonging to Unit No. 3 Owner (or its agents or contractors), (B) materially and adversely interfere with the use and normal business operations of the parking garage located within Unit No. 3, unless the same is required to comply with a government directive, provided Unit No. 1 Owner uses diligent efforts to minimize any impact on the operations of Unit No. 3, and (C) preclude Unit No. 3 from providing at least 1,000 legal parking spaces in Unit 3 or making available attendant assisted parking accommodations for an additional 244 vehicles as required by applicable governmental approvals in place as of the Effective Date. Unit No. 2 Owner shall also have the right in an emergency to have access and take such actions as might on a temporary basis be deemed to have a material or adverse impact on the improvements in Unit No. 3 or in the operations within Unit No. 3 in order to stabilize and address the identified emergency condition, provided Unit No. 2 Owner uses diligent efforts to minimize an impact on the improvements or operations of Unit No. 3. Penetration of any slab bounding or located within Unit No. 3 to locate pipes, chases, conduits and ductwork in the ordinary course may not be deemed work that materially and adversely impacts the structure of the Building, provided the same is done in accordance with applicable codes of the District of Columbia.

(iii) Unit No. 1 Owner shall have an easement of access and use in and on Unit No. 2 to install, locate, maintain, repair and replace from time to time Unit Facilities serving Unit No. 1 and any Limited Common Element assigned thereto located in and on Unit No. 2, provided, except in an emergency or where required to comply with a government

directive, the same would not and does not materially and adversely (A) impact the structure of the Building and/or the physical improvements located in Unit No. 2 belonging to Unit No. 2 Owner (or its agents or contractors), or (B) interfere with the use and normal business operations of the commercial or retail business located within Unit No. 2. Penetration of any slab to locate pipes, chases, conduits and ductwork in the ordinary course may not be deemed work that materially and adversely impacts the structure of the Building, provided the same is done in accordance with applicable codes of the District of Columbia.

(iv) Unit No. 2 Owner shall have an easement of access and use in and on Unit No. 1 to install, locate, maintain, repair and replace from time to time Unit Facilities serving Unit No. 2 and any Limited Common Elements assigned thereto located in and on Unit No. 1, except in an emergency or where required to comply with a government directive, provided the same does not materially and adversely (A) impact the structure of the Building and/or the physical improvements located in Unit No. 1 belonging to Unit No.1 Owner (or it tenants, agents, contractors or licensees), or (B) interfere with the use and normal business operations of the commercial or retail business located within Unit No 1. Penetration of any slab to locate pipes, chases, conduits and ductwork in the ordinary course may not be deemed work that materially and adversely impacts the structure of the Building, provided the same is done in accordance with applicable codes of the District of Columbia.

(v) Unit No. 3 Owner shall have an easement of access and use in and on Unit No. 1 to install, locate, maintain, repair and replace from time to time Unit Facilities serving Unit No. 3, any Limited Common Elements assigned thereto and any easements granted for areas located in and on Unit No. 1, except in an emergency or where required to comply with a government directive, provided the same does not materially and adversely (A) impact the structure of the Building and/or the physical improvements located in Unit No. 1 belonging to Unit No. 1 Owner (or it tenants, agents, contractors or licensees), or (B) interfere with the use and normal business operations of the commercial or retail business located within Unit No 1. Penetration of any slab to locate pipes, chases, conduits and ductwork in the ordinary course may not be deemed work that materially and adversely impacts the structure of the Building, provided the same is done in accordance with applicable codes of the District of Columbia.

(vi) Unit No. 3 Owner shall have an easement of access and use in and on Unit No. 2 to install, locate, maintain, repair and replace from time to time Unit Facilities serving Unit No. 3, any Limited Common Elements assigned thereto and any easements granted for areas located in and on Unit No. 2, except in an emergency or where required to comply with a government directive, provided the same does not materially and adversely (A) impact the structure of the Building and/or the physical improvements located in Unit No. 2 belonging to Unit No. 2 Owner (or it tenants, agents, contractors or licensees), or (B) interfere with the use and normal business operations of the commercial or retail business located within Unit No 2. Penetration of any slab to locate pipes, chases, conduits and ductwork in the ordinary course may not be deemed work that materially and adversely impacts the structure of the Building, provided the same is done in accordance with applicable codes of the District of Columbia.

(vii) Unit No. 3 Owner shall also have an easement of access to and use of a portion of the General Common Element elevator lobby on each of Levels P-2 and P-1, to install, locate, maintain, repair and replace from time to time "pay on foot" equipment to permit

patrons to pre-pay parking fees for use of the parking facility located in Unit No. 3, but only at the easement area locations specifically depicted on the Plans, or as may otherwise approved by the Unit Owners Association by Required Vote, and then only in manner that would not and does not materially and adversely impact (A) the structure of the General Common Elements, the Limited Common Elements assigned to another Unit Owner, or any improvements in any easement areas assigned by this Declaration, and (B) interfere with and adversely impact the use and normal business operations of the commercial or retail business located within either Unit No. 1 or Unit No. 2.

(viii) Unit No. 3 Owner shall also have an easement of access to and use of the roof to the Building, which roof is a General Common Element, to install, locate, maintain, repair and replace from time to time Unit Facilities serving Unit No. 3 but only at those easement area locations specifically depicted on the Plans, in manner that would not and does not materially and adversely impact (A) the structure of the General Common Elements, the Limited Common Elements assigned to another Unit Owner, or any improvements in any easement areas assigned by this Declaration, (B) any improvements located in either Unit No. 1 or Unit No. 2, and (C) interfere with and adversely impact the use and normal business operations of the commercial or retail business located within either Unit No. 1 or Unit No. 2.

(ix) Subject to the provisions of Section 4.3 (b)(x) below with regard to the right to use any portion of the roof of the Building located directly above Unit No. 2, Unit No. 1 Owner shall have an easement of access to and use of the roof to the Building, which roof is a General Common Element, to install, locate, maintain, repair and replace from time to time Unit Facilities serving Unit No. 1 and any Limited Common Element assigned thereto, in a manner that would not and does not materially and adversely (A) impact the structure of the General Common Elements, the Limited Common Elements assigned to another Unit Owner, or any improvements in easement areas specifically designated on the Plans, (B) impact the physical improvements located in Unit No. 2 belonging to Unit No. 2 Owner (or its agents or contractors), or (C) interfere with and adversely impact the use and normal business operations of the commercial or retail business located within Unit No. 2.

(x) Unit No. 2 Owner shall have an easement of access to and use of the portion of the roof to the Building located above Unit No. 2, which roof is a General Common Element, to install, locate, maintain, repair and replace from time to time Unit Facilities serving Unit No. 2 and any Limited Common Element assigned thereto, provided in a manner that would not and does not materially and adversely (A) impact the structure of the General Common Elements, the Limited Common Elements assigned to another Unit Owner, or any improvements in easement areas specifically designated on the Plans, (B) impact the physical improvements located in Unit No. 1 belonging to Unit No. 1 Owner (or its agents or contractors), or (C) interfere with and adversely impact the use and normal business operations of the commercial or retail business located within Unit No. 1. Where there is a conflict in the exercise of rights afforded Unit No. 1 Owner under Section 4.3 (b) (ix) above with regard to the use of the roof of the Building above Unit No. 2 and the exercise of right afforded Unit No. 2 Owner under this Section 4.3 (b) (x) then the rights of Unit No. 2 Owner under this Section 4.3 (b) (x) shall have priority, provided that if in the exercise of its rights to place its Unit Facilities on the portion of the roof of the Building above Unit No. 2, Unit No. 2 Owner requires the removal or relocation of Unit Facilities of Unit No. 1 Owner or of its agents or tenants, then Unit

No. 2 Owner shall provide written notice to the Managing Agent of Unit No. 2 Owner's desire to exercise its rights with regard to placement of its Unit Facilities, and shall afford Unit No. 1 Owner a period of not less than thirty (30) days to relocate any of its Unit Facilities that conflict with Unit Facilities of Unit No. 2 Owner to a portion of that roof the Building above Unit No. 2 that would not be reasonably expected to interfere with the Unit Facilities of Unit No. 2 Owner. Any relocation of Unit Facilities shall be at the sole cost and expense of Unit No. 1 Owner.

(c) Notwithstanding any provision to the contrary in this Section 4.3, except in an emergency or where required to satisfy a government directive, the right of access to each of Unit No. 1 and to Unit No. 2 by the Unit Owners Association or by any Unit Owner, or by any agent, contractor or representative of that other Unit Owner, with regard to matters covered by this Section 4.3, shall be further conditioned and restricted by the following (the "Facilities Access Conditions"):

(i) As to Unit Facilities and Service Facilities, the repair, replacement, or relocation of existing Unit Facilities and Service Facilities and the installation of new Service Facilities within either Unit No. 1 or Unit No. 2, and the Limited Common Elements in either case assigned thereto, may be undertaken by the Unit Owners Association or by another Unit Owner only in those instances in which no practical alternative exists that is commercially reasonable;

(ii) As to Unit Facilities and Service Facilities, the repair, replacement, or relocation of existing Unit Facilities and Service Facilities and the installation of new Service Facilities within either of Unit No. 1 or Unit No. 2, and the Limited Common Elements in either case assigned thereto, may be undertaken by the Unit Owners Association or any other Unit Owner only subject to the reasonable direction of Unit No. 1 Owner or Unit No. 2 Owner, as applicable, as to the site of any re-location or new location and the configuration of such installation.

(iii) As to Unit Facilities and Service Facilities, the repair, replacement, or relocation of existing Unit Facilities and Service Facilities and the installation of new Service Facilities within either of Unit No. 1 or Unit No. 2, and the Limited Common Elements in either case assigned thereto, may only be undertaken by the Unit Owners Association or any other Unit Owner in the affected portion of the Unit or Limited Common Element in question when the tenant or occupant of that portion of the Unit or Limited Common Element is open for business.

(iv) The Unit Owners Association or a Unit Owner seeking to repair, replace, or relocate existing Unit Facilities or Service Facilities, as applicable, or to install new Service Facilities shall reimburse the affected Unit Owner (or its tenant or occupant of the affected portion of the Unit in question) for the reasonable costs of providing security reasonably necessitated by those repair, replacement, relocation or installation, as reasonably and prudently determined by the affected Unit Owner.

(v) Any relocation of existing Service Facilities or installation of new Service Facilities within Unit No. 1, and any Limited Common Elements assigned thereto, and within Unit No. 2, and any Limited Common Elements assigned thereto, may only be installed above any drop ceiling within the affected portion of the Unit in question, or if no drop ceiling is

installed then above the level of any lighting fixtures installed in the affected portion of the Unit in question, nor where there is no drop ceiling may any relocation or installation of Service Facilities interfere with any graphics or stacking space whether located or installed above or below the level at which lighting fixtures have been set.

(vi) Any relocation of existing Unit Facilities or Service Facilities or installation of new Service Facilities may not adversely affect the use or operation of an affected Unit, the assigned Limited Common Elements, or the impacted portion thereof in either case, or in any manner reduce the useable area below the level of any lighting fixtures installed in a Unit, the assigned Limited Common Elements, or the impacted portion thereof.

(vii) No relocation of existing Unit Facilities and Service Facilities or installation of new Service Facilities may require an affected Unit Owner (or any tenant or occupant thereof) to make changes in the manner or nature of the use and normal business operations of its Unit or in the use or operation of any constituent part thereof as reasonably determined by the affected Unit Owner.

(viii) Except in an emergency or where satisfaction of a legal order is required, no repair, replacement of existing Unit Facilities and Service Facilities, or relocation of existing Service Facilities, or installation of new Service Facilities shall occur (A) during the business hours of the Unit or of any tenant or occupant of any portion of the Unit to be impacted, (B) during the calendar months of August, November and December and such other months (or portions thereof) that are recognized and accepted from time to time as prime retail shopping periods in the retail market place in Washington, D.C., and (C) without the first giving of no less than forty eight (48) hours prior notice in writing to the impacted Unit Owner.

(d) The Unit Owners Association or a Unit Owner seeking to repair, replace, relocate or install Unit Facilities or Service Facilities, as applicable, shall paint or otherwise finish the repair, replacement, relocation or installation so as to be compatible with the then existing design criteria in place of the affected Unit Owner or its tenant or occupant.

(e) Before a Unit Owner may exercise any rights afforded to in by this Section 4.3, it shall review the plans related to such repair, replacement and relocation of Unit Facilities and Service Facilities with the Unit Owner whose Unit will be affected, and with the Unit Owners Association or its designee. The Unit Owner shall give due consideration to comments received from the affected Unit Owner(s) and from the Unit Owners Association concerning the proposed plans and shall use its best efforts to find reasonable accommodation of the concerns expressed in the location, installation and subsequent operation and use of the equipment, facilities and supporting equipment located within a Unit or the Common Elements. The Unit Owner in the exercise of such right shall use commercially reasonable efforts to minimize disruption of the use of other Units and the Common Elements by the applicable Unit Owner(s) thereof, during the installation and then subsequent use and operation. Each Unit Owner exercising this right agrees to indemnify and hold harmless the affected Unit Owner and the Unit Owners Association against all damages, liability, claims and expenses, including reasonable attorneys fees and litigation costs, incurred by the affected Unit Owner, the Unit Owners Association or both as a direct result of the exercise of the rights afforded to it by this Section 4.3.

(i) Subject to obtaining the prior approval from the Unit Owners Association in accordance with Section 5.6(d) or Section 5.7(b) of the Bylaws, as applicable, if and when required, and in accordance with this Section 4.3, each Unit Owner may, in connection with the performance of alterations or additions within its Unit and assigned Limited Common Elements, connect any electrical, mechanical, plumbing, telephone, telecommunications, fire/security alarm and other systems to the General Common Element building systems of the Building through such Service Facilities.

(ii) The Unit Owners Association shall have an easement for access to and to use all pipes, wires, ducts, cables, conduits, public utility lines and all other utility distribution systems located within the boundaries of a Unit and assigned Limited Common Elements thereto to the extent any such pipe, duct, cable, wire, conduit, public utility line or other utility distribution system serves the Common Elements or is necessary for service to the Common Elements and such use does not unreasonably burden the affected Unit. Before the Unit Owners Association may exercise this right, it shall review the same with the affected Unit Owner and cooperate with the affected Unit Owner to reduce any impact of such access on the affected Unit Owner.

(f) Each Unit Owner shall indemnify and hold harmless, to the fullest extent permitted by applicable law, the Unit Owners Association as to Common Elements and each Unit Owner through whose Unit or Limited Common Elements, in each case as to its right of access and use granted in this Section with regard to any claims, damages or losses suffered as a result of or arising from the Unit Owner's access and use of the various areas of the Building subject to easement for the benefit of that Unit Owner.

Section 4.4 Support. Every portion of a Unit, which contributes to the structural support of the Building, a Unit or the Common Elements, shall be burdened with an easement of lateral and subjacent structural support and necessity for the benefit of all other Units and the Common Elements.

Section 4.5 Utilities. The Unit Owners Association reserves the right on behalf of the Unit Owners to grant with respect to the Condominium public and private utility easements and to lay water, sanitary and storm sewer, electricity, telephone and cable television lines through, on, over or under any portion of the Building and the Land, which right shall be exercised by the Unit Owners Association in compliance with the provisions of Section 4.2. Before the Unit Owners Association may exercise this right, it shall review the same with the affected Unit Owner and cooperate with the affected Unit Owner to reduce any impact of such access on the affected Unit in accordance with the Facilities Access Conditions.

Section 4.6 Encroachments. In the event and to the extent that any portion of any Unit or Common Elements, as actually constructed, encroaches, as of the Effective Date of this Declaration, upon any other Unit or any Common Elements, a perpetual easement shall exist for the use, maintenance, repair and replacement of such encroachment by the Unit Owner of the encroaching Unit (or by the Unit Owners Association in the case of any encroaching Common Elements).

Section 4.7    Antenna and Satellite Dish Easement.

(a)    An irrevocable easement is hereby granted to Unit No. 3 Owner to permit Unit No. 3 to install and locate on the roof of the Building not more than two (2) satellite dishes or antennae and ancillary equipment, cabling and wiring thereto and therefor ("Antenna Equipment") related to the operation of the parking facilities located in Unit No. 3 for purposes accessory to the operation of Unit No. 3 as a public, off street parking facility, and not for other commercial purposes. The location on the roof of the Building shall be as reasonably determined and designated by the Unit Owners Association from time to time, provided that the consent of Unit No. 1 Owner shall also be required where the designated location would be on the portion of the roof of the Building located within the boundaries of Unit No. 1, and the consent of Unit No. 2 Owner shall also be required where the designated location would be on the portion of the roof of the Building located above Unit No. 2. The easement granted shall include an easement for access to maintain, repair, replace and remove such Antenna Equipment (including the right to run such cabling, wiring or ancillary equipment in and through Unit No. 1 or Unit No. 2, as applicable, as reasonably may be required to operate the applicable satellite dishes or antennae); provided that (i) Unit No. 3 Owner shall pay any and all costs in connection with the installation, maintenance, repair, replacement and removal of any Antenna Equipment, whether arising directly, as a Special Expense to the Unit Owners Association or an reimbursement to the Unit Owner through whose Unit access to the designated portion of the roof of the Building is required, including for the cost and expenses of repairing any damage caused to the roof of the Building and to the affected Unit, and (ii) the installation, operation and maintenance of any Antenna Equipment by Unit No. 3 Owner shall be in accordance with the applicable provisions of the Zoning Regulations and other applicable codes, regulations and ordinances. Should the Unit Owners Association by Standard Majority Vote desire to relocate the Antenna Equipment appurtenant to Unit No. 3, and the equipment related thereto, then it may require Unit No. 3 Owner to do so, so long as it is at no cost to Unit No. 3 Owner, shall be without material interruption or diminution (i.e., no interference) of service to Unit No. 3, and shall provide a comparable location for such equipment on the roof of the Building.

(b)    Subject to the provisions of Section 4.7 (c) below where Unit No. 1 proposes to locate Antenna Equipment related to Unit No. 1 on the portion of the roof above Unit No. 2, an irrevocable easement is hereby granted to Unit No.1 Owner and the tenants and other occupants of said Unit to install, maintain, repair, replace and remove Antenna Equipment related to Unit No. 1 on the roof of the Building; provided that (i) Unit No.1 Owner shall pay any and all costs in connection with the installation, maintenance, repair, replacement and removal any of its Antennae Equipment, whether arising directly, as a Special Expense to the Unit Owners Association, including for the cost and expenses of any repair any damage caused to the roof of the Building, (ii) the installation, operation and maintenance of any such equipment by Unit No.1 Owner shall be in accordance with the applicable provisions of the Zoning Regulations and other applicable codes, regulations and ordinances, and any rules and regulations of the Unit Owners Association regarding the manner of installation, the appropriateness of siting and maintenance and repair standards for such equipment, and (iii) the installation does not interfere with the location of any Antenna Equipment of Unit No. 2 Owner located on the portion of the roof of the Building above Unit No. 2 as provided for in Section 4.7(c) of this Declaration.

(c) An irrevocable easement is hereby granted to the Unit No. 2 Owner and the tenants and other occupants of said Unit to install, maintain, repair, replace and remove Antenna Equipment related to Unit No. 2 on the portion of the roof of the Building located above Unit No. 2; provided that (i) Unit No. 2 Owner shall pay any and all costs in connection with the installation, maintenance, repair, replacement and removal any satellite dish or antenna and related equipment, whether arising directly, as a Special Expense to the Unit Owners Association, including for the cost and expenses of any repair any damage caused to the roof of the Building, and (ii) the installation, operation and maintenance of any such equipment by Unit No. 2 Owner shall be in accordance with the applicable provisions of the Zoning Regulations and other applicable codes, regulations and ordinances, and any rules and regulations of the Unit Owners Association regarding the manner of installation, the appropriateness of siting and maintenance and repair standards for such equipment. Where a conflict arises between the siting or the operation of Antenna Equipment installed on the portion of the roof of the Building above Unit No. 2 by Unit No. 2 in conjunction with its use of Unit No. 2 and the siting or operation of any Antenna Equipment on same portion of the roof by Unit No. 1 (or any tenants thereof) in conjunction with the use of Unit No. 1, then priority and preference shall be given to the Antenna Equipment related to Unit No. 2, subject to the following: (i) Unit No. 2 Owner shall provide written notice to the Managing Agent of Unit No. 2 Owner's desire to exercise its rights with regard to placement of its Antennae Equipment, (ii) Unit No. 1 Owner shall be afforded a period of not less than thirty (30) days to relocate any of Antenna Equipment related to Unit No. 1 that conflicts with the Antennae Equipment of Unit No. 2 Owner move its Antenna Equipment to a portion of that roof the Building that would not be reasonably expected to interfere with the Antenna Equipment of Unit No. 1 Owner. Any relocation of Antenna Equipment shall be at the sole cost and expense of Unit No. 1 Owner.

(d) Each Unit Owner shall indemnify and hold harmless the Unit Owners Association as to Common Elements and each Unit Owner through whose Unit or Limited Common Elements, in each case as to its right of access and use granted in this Section with regard to any claims, damages or losses suffered as a result of or arising from the Unit Owner's access and use of the various areas of the roof of the Building to which it has easement rights.

Section 4.8 Shopping Cart Corrals. Each of Unit No.1 Owner and Unit No. 2 Owner shall have easements to those portions of Unit No. 3 to establish shopping cart corrals, and install equipment related thereto, serving the needs of the customers of the retail operations being conducted in Unit No. 1 and Unit No. 2 as applicable, provided that (a) Unit No. 3 will continue to have no less than one thousand (1,000) legal parking spaces and access thereto satisfying the requirements of the Zoning Regulations, and (b) Unit No. 3 Owner will continue to have the ability to provide within Unit No. 3 accommodations for attendant assisted parking for two hundred forty four (244) additional vehicles as required by the provisions of the BZA Order. The location and operation of each shopping cart corral from time to time shall be determined after consultation by each Unit Owner with Unit No. 3 Owner in accordance with the applicable provisions of the Declaration of Parking Operations. As otherwise provided for in the Declaration of Parking Operations, each of Unit Owner No. 1 and Unit Owner No. 2 shall be solely responsible for the installation, operation, maintenance, repair and removal of any equipment related to a shopping cart corral established for its benefit and shall be undertaken by that Unit Owner in manner to ensure that no shopping cart corral will unreasonably or materially interfere with the operation of the parking garage within Unit No. 3. All costs and expenses of

operation of a shopping cart corral shall be borne by the benefited Unit Owner, and Unit Owner No. 3 shall have no liability for any costs and expenses related thereto. Each of Unit Owner No. 1 and Unit Owner No. 2 shall indemnify and hold harmless Unit Owner No. 3 and the Unit Owners Association with regard to any claims, damages or losses suffered with regard to the shopping cart corrals, except in those instances where the same may have been caused by the gross negligence or willful misconduct of the Unit No. 3 Owner, its employees, agents, mortgagee and representatives of any of them, including but not limited to the operator of the parking facility within Unit No. 3.

Section 4.9 Units Subject to the Condominium Instruments. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of the Condominium Instruments, as well as the Rules and Regulations, as any of the same may be amended from time to time in accordance with this Declaration or as applicable under the Bylaws. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit or portion thereof shall constitute an agreement that the provisions of Condominium Instruments, as well as the Rules and Regulations, as they may be duly amended from time to time, are accepted and ratified by such Unit Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be enforceable equitable servitudes and covenants running with the land and shall bind any person at any time having any interest or estate in such Unit as though such provisions were recited and stipulated at length in each and every such deed of conveyance or lease.

Section 4.10 Public Space Covenants. Other than as to Title Documents, where Unit No. 1 Owner (or any party deriving its interest in that Unit or part thereof, including by lease or license) seeks and obtains an entitlement to use any public space, being space located in any of the public rights of way abutting the Building, then Unit No. 1 Owner and not the Unit Owners Association shall be responsible for compliance with the provisions of the applicable public space covenant entered into in conjunction with obtaining that entitlement. Unit No. 1 Owner shall however apprise the Unit Owners Association of such Unit Owner's application for rights to use public space, and the Unit Owners Association agrees to fully cooperate with Unit No. 1 Owner in the Unit Owner's application to the relevant government authorities for permission to use public space, including executing any consents or authorizations that may be required of the Unit Owners Association, provide the same does not cause the Unit Owners Association to incur any additional costs or expenses. Any use of public space by Unit No. 1 Owner (or any party deriving its interest in that Unit or part thereof, including by lease or license) shall be at the sole expense of Unit No. 1 Owner; to the extent any cost or expense is incurred by the Unit Owners Association the same shall become a Special Expense chargeable to the Unit Owner.

Section 4.11 Assumption of Rights and Obligations under Title Documents. The Unit Owners Association on behalf of each Unit Owner shall be deemed the successor and assignee of the Declarant as to any rights and obligations of the Declarant arising under any of the Title Documents as the same relate to the Property and the operation of the Condominium generally. Notwithstanding the foregoing, in no event shall the Unit Owners Association be deemed to be the successor to the Declarant under the LDA and the Mortgagee Agreement, which LDA and the Mortgagee Agreement remain a private contract between the parties thereto, and thus the Unit Owners Association shall have no liability or responsibility with regard to performance thereunder and the Declarant shall hold the Unit Owners Association harmless for any liability

that may arise thereunder. To the extent that satisfaction of any obligation of the LDA and the Mortgagee Agreement involves the modification of the physical structure of the Building or any of the Common Elements, then, provided that approval has been first obtained in accordance with the provisions of the LDA and/or the Mortgagee Agreement for the undertaking of such modification, only approval by a Standard Majority Vote of the Unit Owners Association shall be required before such modification may be undertaken.

Section 4.12 Rights Related to Placement, Installation, Maintenance and Repair of Signage and Other Identification Monuments.

(a) In Common Elements.

(i) Except for such signs, awnings, pylons and other identification monuments as may be erected, placed, posted, installed or displayed by the Unit Owners Association in Common Elements (A) to comply with applicable governmental requirements, (B) to provide appropriate and customary directional and identification signage for service areas and facilities of the General Common Elements (including but not limited to a building directory, parking garage signage, etc.) of a quality customarily found in and on a high quality retail/commercial project and (C) seasonal displays of a quality customarily found in and on a high quality retail/commercial project, no identification monuments, such as but not limited to advertising and naming signs of any kind, banners, awnings and pylons, (collectively "Identification Monuments") shall be erected, placed, posted, installed or displayed in and on the General Common Element areas without the prior written approval of the Unit Owners Association as provided in subsection (d) below of this Section 4.12.

(ii) A Unit Owner may erect, place, post, install and display Identification Monuments in and on Limited Common Elements areas appurtenant to its Unit, subject to review with the Unit Owners Association regarding manner of affixing, maintenance and repair, as well as compliance with applicable Rules and Regulations.

(b) Within or Related to Unit No. 3. The Unit No. 3 Owner shall be required to post and thereafter maintain, at such Owner's sole cost and expense, clear and user-friendly Identification Monuments within Unit No. 3 in conjunction with its parking facilities operation to ensure that patrons of the parking garage located within Unit No. 3 are properly guided to (i) pedestrian exits, staircases, elevators and escalators, (ii) vehicular exits to and from the parking facilities, and (iii) specific retail uses situated in Unit No. 1 and Unit No. 2, subject to review and approval pursuant to and in accordance with the Declaration of Parking Operations.

(c) Within or Related to Unit No. 1 and Unit No. 2. Each of Unit No. 1 Owner and Unit No. 2 Owner shall be required to post and thereafter maintain, at its sole cost and expense, clear and user-friendly Identification Monuments within its Unit to ensure that patrons of such Units can be properly guided to the Atrium Lobby, pedestrian exits, staircases, elevators and escalators.

(d) Approval by the Unit Owners Association.

(i) Any Identification Monument or modification thereof proposed to be erected, placed, posted, displayed, posted or installed by a Unit Owner for its own benefit, or on behalf of or for the benefit of any tenant or occupant of a Unit in and on the General Common Elements, as well as the lighting thereof, shall be subject to the review and approval of the Unit Owners Association, by Special Majority Vote, as to the design, size, location and manner of attachment as well as for the specifications for the maintenance and upkeep subsequent to installation by the Unit Owner (or its designee), subject to the following provisions.

(ii) The power to act on behalf of the Unit Owners Association to approve Identification Monuments and related matters in and on the General Common Elements proposed to be installed or modified by a Unit Owner may be delegated to the Managing Agent upon a Special Majority Vote. The Managing Agent shall thereafter have the authority to approve any proposed Identification Monument including design, size, location, specifications for installation and manner of attachment, as well as the specifications for maintenance and upkeep, after consultation with the President-Treasurer. The Unit Owners Association acting directly, or through the Managing Agent shall have no more than ten (10) days following the receipt of a written request from a Unit Owner to grant approval, or to withhold the grant of approval (with comment), to any request for approval of an Identification Monument. Failure of the Unit Owners Association, acting directly, or through the Managing Agent, to respond to a request for approval of an Identification Monument by a Unit Owner within such ten (10) day period shall be deemed the approval of the Unit Owners Association of such proposed Identification Monument.

(iii) If approval of a proposed Identification Monument in and on Common Elements is denied, then the Unit Owner may propose an alternate design or specifications to respond to the objections giving rise to the disapproval.

(iv) Notwithstanding anything herein to the contrary, any Identification Monument proposed to be attached to on the exterior of the Building that could reasonably be expected by the Unit Owners Association or President-Treasurer to affect the sight lines for the ingress from or egress to Unit No. 3 from an adjacent public right of way must be approved in advance by the Unit No. 3 Owner.

(e) License for Installation. Where permission is granted for the installation of an Identification Monument on or within General Common Elements, the Unit Owner receiving such permission shall be deemed to have received a license from the Unit Owners Association to attach, maintain and repair the same. Any replacement of any previously approved Identification Monument on or within General Common Elements must be reviewed with the Unit Owners Association. Each Unit Owner, by accepting a license from the Unit Owners Association related to attachment of an Identification Monument, agrees to indemnify and hold harmless the Unit Owners Association with regard to any claims, damages or losses suffered.

(f) Pre-approved Identification Monuments. Any Identification Monument installed and attached on or to any Common Elements as part of the initial construction of the

Condominium shall be deemed approved by the Unit Owners Association, and the Unit Owner benefited by such sign shall have the right to repair, replace and maintain such Identification Monument without the consent of the Unit Owners Association.

(g) Assignment of Responsibility of Identification Monuments. Any Identification Monument installed by a Unit Owner in and on the Common Elements on behalf of itself or its tenants or occupants of its Unit shall be undertaken at the sole cost and expense of that Unit Owner. Additionally any Unit Owner benefited by an Identification Monument in the Common Elements shall be responsible at its sole cost and expense for the operation, maintenance, repair, replacement or removal. To the extent the Unit Owners Association incurs any costs or expenses related to any Identification Monument installed by a Unit Owner, whether as to the initial installation, or any subsequent operation, maintenance, repair, replacement or removal of the same, then any costs and expenses incurred shall be deemed a Special Expense of the Unit Owner.

(h) Benefit and Burden. Any Unit Owner (or tenant/occupant thereof) that erects, places, posts, installs or displays an Identification Monument in, on or within the Common Elements, as permitted by and approved in accordance with the provisions of this Section 4.12, shall be solely entitled to the benefits attributable to that Identification Monument, but shall be similarly liable to the Unit Owners Association or another Unit Owner, as applicable, for the burdens arising from the installation, manner of attachment, maintenance, repair and operation of any Identification Monument, all at no expense to the Unit Owners Association or the other Unit Owner, including but not limited compliance with Unit Owner Association conditions related to installation, maintenance and repair. Any failure of a Unit Owner to satisfy its obligations which in any way causes the Unit Owners Association to incur expenses shall permit the Unit Owners Association to assess against such Unit Owner such reasonable and actual expenses as Special Expenses of that Unit Owner; provided, however, that the Unit Owners Association shall not have the right to cure the default of an Owner under this Section 4.12 unless and until the Unit Owner shall have been provided with no less than ten (10) business days to cure and/or correct its default after receipt of written notice to do so from the Unit Owners Association.

#### Section 4.13 Compliance with Laws.

(a) Each Unit Owner agrees to promptly and fully comply at its sole cost and expense with all applicable laws, regulations and ordinances related to the use and occupancy of its Unit and agrees that it shall take no action or fail to take any action that would cause the Condominium or any other Unit therein to be cited for infraction of any law, ordinance or regulation related to the use or occupancy of its Unit, including any laws, regulations and ordinances applicable to the use, storage and disposal of hazardous materials and substances. Each Unit Owner agrees to indemnify and hold harmless the Unit Owners Association and the other Unit Owners for any matters of noncompliance by the Unit Owner, including but not limited to damages arising therefrom and reasonable attorneys' fees. Furthermore, any failure of a Unit Owner to satisfy its obligations which in any way causes the Unit Owners Association to incur expenses shall permit the Unit Owners Association to assess against such Unit Owner such reasonable and actual expenses of cure or correction as Special Expenses of that Unit Owner, provided that such Unit Owner shall have been given no less than ten (10) business days to cure

and/or correct its default after receipt of written notice to do so from the Unit Owners Association.

(b) So long as the District of Columbia or an affiliated governmental entity is subject to the provisions of Section 446 of the District of Columbia Home Rule Act and the federal Anti-deficiency Act (the "Anti-deficiency Act"), then Declarant, Unit No. 1 Owner, the Unit No. 2 Owner and the Unit Owners Association each hereby acknowledge that the obligations of the District of Columbia or its affiliated governmental entity as Unit No. 3 Owner to fulfill financial obligations of any kind pursuant to this Declaration, including indemnification, if any, may be subject to the provisions of the Anti-deficiency Act, regardless of whether a particular obligation was expressly so conditioned. The District of Columbia, on behalf of itself and such other government entity, agrees that, as Unit Owner 3, it will, in good faith, use its best efforts to obtain and exercise all lawful and available authority to satisfy any of its financial obligations that may arise under this Declaration, including, without limitation, attempting to obtain the necessary appropriations and/or the reprogramming of available funds if such reprogramming is legal and necessary to satisfy its financial obligations; however, the obligations of the District of Columbia or such entity as Unit No. 3 Owner under this Declaration are subject to the receipt of specific authority from Congress, with no implication that Congress will give such authorization. Notwithstanding the foregoing, (i) the obligations of the District of Columbia or such other government entity as Unit No. 3 Owner that may arise under this Declaration shall not constitute an indebtedness within the meaning of any constitution or statutory debt limitation or restriction and do not constitute an obligation for which the District of Columbia or such entity, as Unit No. 3 Owner, is obligated to levy or pledge any form of taxation or for which it has levied or pledged any form of taxation, and (ii) at such time as the District of Columbia or such other governmental entity seeks to convey legal title of Unit No.3 for consideration to any party, then the amount on any assessment of any kind due and owing to the Unit Owners Association by the District of Columbia or such other entity as the Unit No. 3 Owner that is then due and unpaid shall be paid in full to the Unit Owners Association at or prior to the time that legal title to Unit No. 3 is to be conveyed, whether the funds for payment come from the proceeds of the sale of Unit No. 3, from appropriated funds or from other funds available to the District of Columbia or such other government entity.

Section 4.14 Bond Documents. Bonds will be used to finance the costs of the development and construction of Unit No. 3 and the parking garage facility located therein. Each of the Declarant, Unit No.1 Owner, Unit No. 2 Owner and the Unit Owners Association agrees that it may take no action or fail to take any action that would (a) cause the loss of tax exemption status on the Bonds or (b) prevent Unit No. 3 Owner from complying with the material terms of the Bond Documents. Unit No. 3 Owner shall supply to each of the Declarant, the other Unit Owners and the Unit Owners Association a copy of the Bond Documents.

ARTICLE V  
AMENDMENT TO CONDOMINIUM INSTRUMENTS;  
TERMINATION OF CONDOMINIUM;  
REQUIRED CONSENT

Section 5.1 Amendment to Condominium Instruments. Except as permitted by and provided for in Section 2.6 of this Declaration, this Declaration and the other Condominium Instruments may not be amended except with the written consent of all Unit Owners in favor of such amendment, and then only provided that thereafter such amendment is approved in writing by each of the Mortgagees if and to the extent that the provisions of the applicable Mortgage or the Bond Documents require such consent.

Section 5.2 Termination of Condominium Regime. The regime of the Condominium may be terminated pursuant to Section 42-1902.28 of the Condominium Act only with the written consent of all Unit Owners and the written consent of all Mortgagees.

ARTICLE VI  
RIGHT TO LEASE OR SELL UNITS

Section 6.1 Right to Lease.

(a) Each of Unit No. 1 Owner and Unit No. 2 Owner shall have the right to enter into leases with any person or entity for the leasing and occupancy of the Unit or a portion thereof owned by that Unit Owner for the Permitted Uses, subject to any provisions of any of (i) the Title Documents, (ii) the DC USA Deed, (iii) the applicable laws and regulations including the Zoning Regulations, and (iv) the Rules and Regulations that are applicable to that Unit.

(b) Unit No. 3 Owner may not lease or license all or any portion of Unit No. 3 to any Person, except in accordance with and pursuant to the Declaration of Parking Operations, and then only for the Permitted Use specified in Section 1.4 (c) of this Declaration, and in any case only in a manner that does not cause a violation of applicable laws including the Zoning Regulations.

(c) Any Unit Owner that leases or licenses the occupancy of all or any portion of its Unit to any Person shall notify the Unit Owners Association, and supply such information to the Unit Owners Association as the Association may reasonably request, including contact information of responsible Persons in case of an emergency. This requirement to notify and provide information to the Unit Owners Association shall not apply to the Unit No. 3 Owner with regard to the issuance of parking contracts to Persons for use of the parking garage facility located within Unit No. 3, if the same are for hourly or daily parking in the parking garage facility, but shall apply where longer term arrangements are involved, or where there is a lease for the entirety of Unit No. 3. or a significant portion thereof where permitted by this Declaration to a Person. The requirement to notify and supply information shall also apply to any operator or manager of the parking facilities in Unit No. 3 on behalf of Unit No. 3 Owner and any contractual obligations of Unit No. 3 Owner with regard to the operator or manager.

Section 6.2 Right to Mortgage. Each Unit Owner shall have the right, subject to the regime of the Condominium and the Condominium Instruments, to place financing, secured by the Unit or Units owned by such Unit Owner or any part thereof. A Unit Owner shall provide the Unit Owners Association, or its designee with written notice of the placement of any financing secured by the Unit, with information concerning the name and address of such Mortgagee.

Section 6.3 Right to Sell. Each Unit Owner retains the right to sell its Unit and convey legal title to its Unit in conjunction with such sale, whether in response to an unsolicited offer or by formal offer of sale. A Unit may only be sold where there will be a continuation of the Permitted Uses for that Unit, and then only subject to any applicable provisions of the Title Documents. In conjunction with the sale of its Unit, a Unit Owner shall clear all delinquencies in payment of assessments of any kind arising under this Declaration, the Bylaws or the Declaration of Parking Operations.

Section 6.4 Right of First Offer.

(a) Notwithstanding the provisions of Section 6.3, if at any time Unit No. 3 Owner desires to sell or otherwise transfer, whether directly or indirectly, all or part of Unit No. 3 (the "Offered Property"), and no law prohibits Unit No. 3 Owner from disposing of the Offered Property by a negotiated sale, Unit No. 3 Owner shall first offer to sell the Offered Property to Unit No. 1 Owner, and thereafter to Unit No. 2 Owner if Unit No. 1 Owner does not previously elect to purchase the Offered Property. Any offering to Unit No. 1 Owner and Unit No. 2 Owner pursuant to this Section 6.4 shall be in writing advising such Unit Owner of the opportunity to purchase the Offered Property upon terms fixed by Unit No. 3 Owner, at its sole reasonable discretion, in the written offering (the "Offering"). The Offering shall specify the basic terms of the sale and the purchase price for the offered Property; provided, however, that the purchase price contained in the Offering shall be an amount that is no greater than the fair market value of the Offered Property as determined solely by Unit No. 3 Owner in good faith as of the date of the Offering (the "Purchase Price"). The Offering shall constitute an offer by Unit No. 3 Owner to sell all of its interests in the Offered Property to Unit No. 1 Owner or Unit No. 2 Owner, as applicable, at the Purchase Price and on the terms and conditions set forth in the Offering. The following provisions shall apply with regard to this process of providing the Offering to first the Unit No. 1 Owner and thereafter to Unit No. 2 Owner, if applicable.

(b) Unit No. 3 Owner shall first provide to Unit No. 1 Owner the Offering. Unit No. 1 Owner shall have thirty (30) days after the date of receipt of the Offering (the "First Acceptance Period") within which to notify Unit No. 3 Owner in writing if Unit No. 1 Owner has elected to purchase the Offered Property based upon the Offering (an "Acceptance Notice"). If Unit No. 1 Owner elects to purchase the Offered Property by timely delivery of an Acceptance Notice to Unit No. 3 Owner, then Unit No. 3 Owner and Unit No. 1 Owner shall enter into a binding agreement (which in all events shall be conditioned upon receipt of any required approvals from any public entities) to purchase the Offered Property pursuant to the terms and conditions of the Offering (the "Contract") within thirty (30) business days after the date of the delivery of the Acceptance Notice by Unit No. 1 Owner to Unit No. 3 Owner. The parties shall proceed to closing under the Contract by a date no later than ninety (90) days after the execution of the Contract by the parties.

(c) If Unit No. 1 Owner (i) elects not to acquire the Offered Property, or (ii) fails to deliver an Acceptance Notice to Unit No. 3 Owner during the First Acceptance Period, or (iii) fails to enter into a Contract within the required 30 business day period, or (iv) fails to settle on its acquisition of the Offered Property under the Contract within the required 90 day period, then Unit No. 1 Owner's right to acquire the Offered Property pursuant to Section 6.4(a) above shall be deemed terminated and Unit No. 3 Owner shall then provide a comparable Offering to Unit No. 2 Owner.

(d) After delivery of an Offering to purchase the Offered Property to Unit No. 2 Owner due to the actions (or omissions) by Unit No. 1 Owner, then Unit No. 2 Owner shall have thirty (30) days after date of receipt by it of the Offering from Unit No. 3 Owner (the "Second Acceptance Period") to deliver to Unit No. 3 Owner an Acceptance Notice based upon the Offering. If Unit No. 2 Owner elects to purchase the Offered Property by timely delivery of the Acceptance Notice, then Unit No. 3 Owner and Unit No. 2 Owner shall enter into a Contract within thirty (30) business days after the date of the delivery of the Acceptance Notice by Unit No. 2 Owner to Unit No. 3 Owner. The parties shall thereafter proceed to closing under the Contract by a date no later than ninety (90) days after the execution of the Contract by the parties.

(e) If Unit No. 2 Owner (i) elects not to acquire the Offered Property, or (ii) fails to timely give the Acceptance Notice to Unit No. 3 Owner during the Second Acceptance Period, or (iii) fails to enter into a Contract within the required 30 business day period, or (iv) fails to settle on its acquisition of the Offered Property within the required 90 day period, then Unit No. 2 Owner's right to acquire the Offered Property pursuant to Section 6.4(d) above shall be deemed terminated and Unit No. 3 Owner shall have the right to sell the Offered Property to any party pursuant to such terms, conditions and Purchase Price as is determined by Unit No. 3 Owner in its sole discretion, subject to the provisions of Section 6.4(h) below.

(f) If, after Unit No. 3 Owner's obligations to offer to sell the Offered Property to Unit No. 1 Owner and then to Unit No. 2 Owner pursuant to the foregoing Sections 6.4(a) through (e) are satisfied, terminated or otherwise waived and Unit No. 3 Owner thereafter has the right to sell the Offered Property to any third party, Unit No. 3 Owner may choose to offer to sell the Offered Property by either a competitive bid process, by offer to any third party or by any other method determined by Unit No. 3 Owner in its sole discretion, subject to the provisions of Sections 6.4 (g) and (h) below of this Declaration.

(g) In the event Unit No. 3 Owner shall desire to sell or otherwise transfer the Offered Property pursuant to a competitive bidding process, either by sealed bid, auction or request for proposals, ("Competitive Process"), then in such event neither Unit No. 1 Owner nor Unit No. 2 Owner shall be precluded from submitting a bid or otherwise participating in such Competitive Process as a bidder. Unit No. 3 Owner shall have no obligation to accept any bid from either Unit No. 1 Owner or Unit No. 2 Owner as the winning bid under any Competitive Process, provided that Unit No.3 Owner may not discriminate against Unit No. 1 Owner or Unit No. 2 Owner due to the fact that neither failed to acquire the Offered Property pursuant to the procedures set forth in Section 6.4(a) through (e) above of this Declaration. Furthermore Unit No. 3 Owner also may not discriminate against Unit No. 1 Owner or Unit No. 2 Owner in the selection of the bidder with the winning bid for the Offered Property in a Competitive Process,

where either submits a bid that is the highest dollar value bid of bids submitted for the Offered Property, so long as the bid of Unit No. 1 Owner or of Unit No. 2 Owner otherwise satisfies all of the requirements and specifications set forth in the Competitive Process for evaluation of a winning bid.

(h) Notwithstanding anything to the contrary contained in this Section 6.4, Unit No. 1 Owner and thereafter Unit No. 2 Owner shall be entitled to receive a new Offering with regard to the sale or other transfer of all or the offered portion of the Offered Property pursuant to the provisions of Sections 6.4(a) through (e) above of this Declaration, under the following circumstances:

(i) Unit No. 3 Owner shall have failed to enter into a contract for the sale of the Offered Property to any third party ("Third Party Sales Contract") within one year following the last day of the Second Acceptance Period, and Unit No. 3 Owner thereafter still desires to sell the Offered Property;

(ii) Unit No. 3 Owner shall have entered into a Third Party Sales Contract, but such Third Party Sales Contract was terminated without closing and Unit No. 3 Owner thereafter still desires to sell the Offered Property;

(iii) Unit No. 3 Owner shall have entered into a Third Party Sales Contract and such Third Party Sales Contract has not closed pursuant to the terms therein within a period of one hundred eighty (180) days after the effective date of the Third Party Sales Contract.

(iv) Notwithstanding anything to the contrary in this Section 6.4, Unit No. 3 Owner may not agree to sell the Offered Property to a Person through a Third Party Sales Contract, whether through the Competitive Process or a negotiated sale, for a purchase price and/or other monetary terms which in the aggregate would result in a sale of the Offered Property for less than ninety percent (90%) of the fair market value of the Offered Property as of the date Unit No. 3 Owner chooses to sell Unit No. 3 under Section 6.4(a) above, as such fair market value is determined as of that date in the sole good faith and reasonable discretion of Unit No. 3 Owner.

(v) The provisions of this Section 6.4 shall not apply to the exercise by a Mortgagee of its rights under any Mortgage encumbering legal title to Unit No. 3 or under the Bond Documents, nor to the disposition by such Mortgagee of its interests in Unit No. 3 following its exercise of rights under the then applicable Mortgage or the then applicable Bond Documents, but shall apply thereafter to any subsequent disposition of the Offered Property by any purchaser of the Mortgagee's interest in the Offered Property.

Section 6.5 Sale or Assignment of Limited Common Elements. A Unit Owner shall not have the right to sell, convey, assign or transfer any Limited Common Elements assigned to

its Unit separate and apart from the conveyance of the Unit to which such Limited Common Elements pertain.

Section 6.6 Estoppel Certificates. Solely in conjunction with the rights and restrictions imposed on each Unit Owner by the Title Documents, the DC USA Deed, this Declaration and the Bylaws, the Unit Owners Association and each Unit Owner (the "Responding Unit Owner") shall execute, acknowledge and deliver to any Unit Owner that makes a request in conjunction with a sale of its Unit, a refinancing of any indebtedness secured by a lien on its Unit or a refinancing of the Bonds (the "Requesting Party") an estoppel certificate in recordable form for the benefit of the Requesting Party, or any prospective purchaser from, lender to or bond holder of the Requesting Unit Owner, stating whether the Requesting Party has complied with rights and restrictions imposed by the Title Documents, this Declaration and the Bylaws as applicable. The Responding Unit Owner shall deliver the same to the Requesting Party upon no less than twenty (20) days' prior written notice by the Requesting Unit Owner to the Responding Party.

## ARTICLE VII SPECIAL DECLARANT RIGHTS

Section 7.1 Generally. Special Declarant Rights are those rights reserved for the benefit of the Declarant as provided for in the Condominium Act and the Condominium Instruments, and shall include, without limitation, the following rights: (a) to complete improvements indicated on the Plats and Plans filed with this Declaration; (b) to maintain models, sales offices, leasing offices, management offices, customer service offices, and signs advertising the Units; and (c) to use easements through the Common Elements and the Units for the purpose of making improvements or performing repairs within the Condominium.

### Section 7.2 Transfer of Special Declarant Rights.

(a) The Declarant may, but shall not be obligated to, transfer Special Declarant Rights created or reserved under the Condominium Act or provided for in the Condominium Instruments. Any transfer by Declarant of Special Declarant Rights hereunder may solely be made to a Unit Owner or a Mortgagee. In no event shall any transfer of Special Declarant Rights hereunder remove, transfer or waive any rights or obligations of Declarant under the Title Documents or the DC USA Deed. Any such transfer shall be by an instrument evidencing the transfer recorded in the Land Records. The instrument is not effective unless executed by the transferor and transferee.

(b) Upon transfer of any Special Declarant Right, the liability of a transferor declarant is as follows:

(i) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for any warranty obligations imposed upon the transferor declarant by the Condominium Act. Lack of privity does not deprive any Unit owner of standing to bring an action to enforce any obligation of the transferor.

(ii) If the successor to any Special Declarant Right is an "affiliate of a declarant" (hereinafter defined), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the Condominium. For purposes of this subsection, the phrase "affiliate of a declarant" shall mean the same as set forth in Section 42-1901.02 of the Condominium Act.

(iii) If a transferor retains any Special Declarant Rights, and transfers other Special Declarant Rights to a successor who is not an affiliate of the transferor, the transferor is liable for any obligations or liabilities imposed on a declarant by the Condominium Act or by the Condominium Instruments that relate to the retained Special Declarant Rights and that arise after the transfer.

(iv) A transferor has no liability for any act or omission, or any breach of a contractual or warranty obligation arising from the exercise of a Special Declarant Right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a Mortgage, in case of foreclosure of any Mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under the Bankruptcy Code or receivership proceedings, of any Units owned by Declarant in the Condominium or real estate in a condominium subject to "development rights" (hereinafter defined), a person acquiring title to all the real estate being foreclosed or sold, but only upon its request, succeeds to any or all Special Declarant Rights related to the real estate held by the Declarant, or to any rights reserved in the Condominium Instruments to maintain models, sales offices, management offices, customer service offices and advertising signs. The judgment or instrument conveying title shall provide for transfer of only the Special Declarant Rights requested. For purposes of this subsection, the term "development rights" means any rights or combination of rights to expand an expandable condominium, contract a contractible condominium, convert convertible land, or convert convertible space.

(d) Upon foreclosure (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a Mortgage, or sale under the Bankruptcy Code or receivership proceedings, of all Units in a Condominium owned by Declarant and other real estate in a condominium owned by Declarant: (i) Declarant shall cease to have any Special Declarant Rights, and (ii) the period of Declarant control, if any, as provided in the Condominium Act, shall terminate unless the judgment or instrument conveying title provides for transfer of all Special Declarant Rights held by the Declarant to a successor declarant.

(e) The liabilities or obligations of persons who succeed to Special Declarant Rights are as follows:

(i) A successor to any Special Declarant Right who is an affiliate of Declarant is subject to any obligations or liabilities imposed on the transferor by the Condominium Act or by the Condominium Instruments.

(ii) A successor to any Special Declarant Right, other than a successor described in paragraphs (iii) or (iv) of this subsection, who is not an affiliate of the Declarant, is subject to any obligations or liabilities imposed by the Condominium Act or the Condominium

Instruments: (A) on a declarant which relates to such declarant's exercise or non-exercise of special declarant rights; or (B) on the transferor, other than: (1) misrepresentations by any previous declarant; (2) warranty obligations on improvements made by any previous declarant, or made before the Condominium was created; (3) breach of a fiduciary obligation by any previous declarant; or (4) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(iii) A successor who is not an affiliate of Declarant and whose sole right is a reservation to maintain models, sales offices, management offices, customer service offices and advertising signs, may not exercise any other Special Declarant Right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof.

(iv) A successor to all Special Declarant Rights held by the transferor who is not an affiliate of the Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Units under this Section 7.2 may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights. So long as a successor declarant may not exercise Special Declarant Rights under this subsection, such successor declarant is not subject to any liability or obligation as a declarant.

(f) Nothing in this Article shall subject any successor to a Special Declarant Right to any claims against or other obligations of a transferor declarant, other than claims or obligations arising under the Condominium Act or the Condominium Instruments.

## ARTICLE VIII MISCELLANEOUS PROVISIONS

Section 8.1 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 8.2 Severability/Conflicts. The invalidity or unenforceability of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid or unenforceable provision had never been included herein. Any conflict between (a) the Condominium Instruments and (b) the Rules and Regulations shall be governed by the Condominium Instruments.

Section 8.3 No Revocation or Partition. The Common Elements shall remain undivided legally as to ownership thereof, and no Unit Owner or any other person shall bring or have the right to bring any action for partition or division thereof, nor shall the Common Elements be abandoned by act or omission, unless the condominium regime is waived and terminated by agreement of all the Unit Owners and all Mortgagees.

Section 8.4 Applicable Law. This Declaration and any interpretation thereof shall be governed by the law of the District of Columbia.


IN WITNESS WHEREOF, GRID Urban Ventures III, LLC, a New York limited liability company, a Managing Member of USPDC, LLC, a New York limited liability company, Managing Member of DC USA Management Co. LLC, a Delaware limited liability company, Manager and Sole Member of DC USA Operating Co., LLC, a New York limited liability company, has caused these presents to be signed in its name by Drew Greenwald, its Managing Member, and Picket Realty Construction Consultants LLC, a New York limited liability company, Manager of DC USA GO, LLC, a New York limited liability company, a Managing Member of USPDC, LLC, a New York limited liability company, Managing Member of DC USA Management Co. LLC, a Delaware limited liability company, Manager and Sole Member of DC USA Operating Co., LLC, a New York limited liability company, has caused these presents to be signed in its name by David L. Picket, a Member, for the purposes of executing, acknowledging and delivering these Bylaws as the act and deed of the various limited liability companies for themselves and in their respective interests in DC USA Operating Co., LLC, the Declarant hereunder, all as of the day and year hereinbefore written.

**DC USA OPERATING CO., LLC,**  
a New York limited liability company

By: DC USA Management Co. LLC,  
a Delaware limited liability company,  
Manager and Sole Member


By: USPDC, LLC,  
a New York limited liability company,  
Managing Member

By: GRID Urban Ventures III, LLC,  
a New York limited liability company,  
Managing Member

By:   
Drew Greenwald  
Managing Member

By: DC USA GO, LLC,  
a New York limited liability company,  
Managing Member

By: Picket Realty Construction Consultants LLC,  
a New York limited liability company,  
Manager

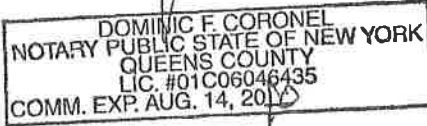
By:   
David L. Picket  
Member

COUNTY OF Queens

STATE OF NEW YORK, to wit:

I, Dominic F. Corone, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Drew Greenwald, Managing Member of GRID Urban Ventures III, LLC, a Managing Member of USPDC, LLC, Managing Member of DC USA Management Co. LLC, itself Manager and Sole Member of DC USA Operating Co., LLC, Declarant, in the foregoing and annexed Bylaws, personally appeared before me in said jurisdiction and, being personally well known to me, acknowledged said instrument to be the act and deed of said limited liability companies and delivered the same as such.

GIVEN under my hand and seal this 26 day of March 2008.

My commission expires: Aug 14, 2010  
[NOTARIAL SEAL]  
  
Notary Public

COUNTY OF New York

STATE OF NEW YORK, to wit:

I, Sheila Curtin, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that David L. Picket, Member of Picket Realty Construction Consultants LLC, Manager of DC USA GO, LLC, a Managing Member of USPDC, LLC, Managing Member of DC USA Management Co. LLC, Manager and Sole Member of DC USA Operating Co., LLC, Declarant, in the foregoing and annexed Bylaws, personally appeared before me in said jurisdiction and, being personally well known to me, acknowledged said instrument to be the act and deed of said limited liability companies and delivered the same as such.

GIVEN under my hand and seal this 26<sup>th</sup> day of March 2008.

Sheila Curtin  
Notary Public  
My commission expires: November 24, 2011

[NOTARIAL SEAL]

SHEILA CURTIN  
Notary Public, State of New York  
No. 01CU6179342  
Qualified in Westchester County  
Commission Expires Dec. 24, 2011

EXHIBIT A

to

DECLARATION  
FOR DC USA CONDOMINIUM

LEGAL DESCRIPTION

All that certain lot or parcel of land situated and lying in the District of Columbia, and more particularly described as follows:

Lot of Record 721 in Square 2674 pursuant to recorded in Subdivision Book 200 at Page 44 among the records of the Office of the Surveyor of the District of Columbia,

**But specifically less and except** (i) any transferable development rights ("TDRs") appurtenant to the above-described property as of the Effective Date, all such rights being retained by the Declarant, (ii) any rights to any benefits, proceeds or other consideration arising from any sale and transfer of those TDRs, all of such rights to be deemed vested and retained by Declarant or its assignees, (iii) any beneficial or other consideration to be paid, posted or given by or on behalf of the Declarant prior to the Effective Date in conjunction with and arising out of any combined lot development arrangements under the Zoning Regulations, (iv) any refund of all or a portion of any governmental imposition paid by or on behalf of the Declarant, including but not limited real property taxes, franchise taxes, business improvement district taxes, public space rentals and similar impositions, imposed upon the Declarant for the period prior to the Effective Date and for which the Declarant has applied for a refund or appealed the imposition of prior to the Effective Date, or for which Declarant has been assessed and charged with regard to any period prior to the Effective Date, (v) any return, release, or refund of any deposits, bonds, or escrow of funds posted by or on behalf of the Declarant prior to the Effective Date in conjunction with the development of the Building, including but not limited to utilities bonds, and (vi) any investment tax credits arising under the United States Internal Revenue Code arising or related the development of the Building.

EXHIBIT B

to

DECLARATION  
FOR DC USA CONDOMINIUM

Common Element Interests Table

<u>Unit Designation</u>	<u>Par Value</u>	<u>Percentage of Undivided Interest</u>
Unit No. 1 (Retail Unit)	40	40.0%
Unit No. 2 (Target Unit)	30	30.0%
Unit No. 3 (Parking Unit)	<u>30</u>	<u>30.0%</u>
Totals	100	100.0%

Appendix A  
to  
Bylaws for DC USA CONDOMINIUM

**TRUSTEE'S JOINDER, CONSENT AND SUBORDINATION  
TO BYLAWS FOR DC USA CONDOMINIUM**

On this 26<sup>th</sup> day of March 2008, the undersigned, Verdugo Trustee Service Corporation, Trustee under that certain Deed of Trust, Assignment of Leases, Security Agreement and Fixture Filing, dated February 15, 2006, securing Citicorp USA, Inc. ("Lender"), recorded on February 16, 2006, among the land records of the Office of the Recorder of Deeds of the District of Columbia as Instrument No. 2006021130 (the "Deed of Trust"), encumbering the land, including the improvements thereon and the appurtenances thereto, described as the Unit No. 1, Unit No. 2 and Unit No. 3 in the Bylaws for DC USA Condominium (the "Bylaws") to which this Trustee's Joinder, Consent and Subordination is appended, with full authority from the beneficiary secured under said Deed of Trust as reflected in Appendix A-1 attached hereto, do hereby consent to the terms and conditions of the foregoing Bylaws, and covenants and agrees that the lien, effect and operation of said Deed of Trust be subject and subordinate to the effect and operation of the Bylaws, said Deed of Trust otherwise to remain unmodified and in full force and effect; provided that such consent and subordination shall not be construed as subordinating the terms and conditions of the Deed of Trust to the terms and conditions of the Bylaws or as deferring to the terms and conditions of the Bylaws in the event of any conflict, it being the intent that the terms and conditions of the Deed of Trust shall govern in any such event and that such consent and subordination shall be effective solely to the extent necessary to permit the creation of a condominium regime form of ownership.

**IN WITNESS WHEREOF**, Verdugo Trustee Service Corporation, has caused this instrument to be executed by Richard M. Fitzgerald, its Vice President, and does hereby appoint said Richard M. Fitzgerald as its attorney-in-fact for purposes of executing, acknowledging and delivering this instrument, for and on behalf of said corporation, all as of the day and year first hereinabove written.

**VERDUGO TRUSTEE SERVICE CORPORATION**

By: \_\_\_\_\_

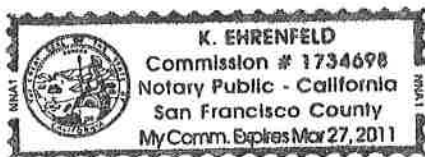
Name: \_\_\_\_\_

Title: \_\_\_\_\_

California )  
San Francisco ) ss:

**BEFORE ME**, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Richard M. Fitzgerald, personally well known (or satisfactorily proven) to me to be the person whose name is subscribed to the foregoing and annexed Instrument, who, being by me first duly sworn, did depose and state that he is the Vice president and attorney-in-fact of Verdugo Trustee Service Corporation, which entity is a party to the foregoing and annexed Instrument, and that he, being duly authorized so to do, executed said Instrument on behalf of said entity and acknowledged the same as its free act and deed for the uses and purposes therein contained.

**WITNESS** my hand and official seal this 26 day of March 2008.



K. Ehrenfeld  
Notary Public  
[ Notarial Seal ]

My Commission Expires:

APPENDIX A-1

BENEFICIARY'S AUTHORIZATION TO TRUSTEE

On this 26th day of March 2008, Citicorp USA, Inc., Beneficiary under that certain Deed of Trust, Assignment of Leases, Security Agreement and Fixture Filing, dated February 15, 2006, securing Citicorp USA, Inc. ("Lender"), recorded on February 16, 2006, among the land records of the Office of the Recorder of Deeds of the District of Columbia as Instrument No. 2006021130 (the "Deed of Trust"), hereby authorizes Verdugo Trustee Service Corporation, Trustee, to execute the annexed Trustee's Joinder, Consent and Subordination for the purposes set forth therein.

IN WITNESS WHEREOF, Citicorp USA Inc., has caused this instrument to be executed by Priya Jayachandran its vice president, and does hereby appoint said Priya Jayachandran its attorney-in-fact for purposes of executing, acknowledging and delivering this instrument, for and on behalf of said corporation, all as of the day and year first hereinabove written.

CITICORP USA, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Priya Jayachandran  
Vice president

District of Columbia )

) ss:

**BEFORE ME**, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Priya Jayachandran, personally well known (or satisfactorily proven) to me to be the person whose name is subscribed to the foregoing and annexed Instrument, who, being by me first duly sworn, did depose and state that she is the Vice President and attorney-in-fact of Citicorp USA, Inc., which entity is a party to the foregoing and annexed Instrument, and that she, being duly authorized so to do, executed said Instrument on behalf of said entity and acknowledged the same as its free act and deed for the uses and purposes therein contained.

**WITNESS** my hand and official seal this 26th day of March 2008.

**ELSA ARAYA**  
Notary Public, District of Columbia  
My Commission Expires 09-14-2011

Elsa Araya  
Notary Public  
[ Notarial Seal ]

My Commission Expires:

**Appendix B**  
**to**  
**Bylaws for DC USA Condominium**

**TRUSTEE'S JOINDER, CONSENT AND SUBORDINATION  
TO BYLAWS FOR DC USA CONDOMINIUM**

On this 26<sup>th</sup> day of March 2008, the undersigned, Verdugo Trustee Service Corporation, Trustee under that certain Indemnity Deed of Trust, Assignment of Leases, Security Agreement and Fixture Filing, dated February 15, 2006, Citicorp North America, Inc. ("Lender"), recorded on February 16, 2006, among the land records of the Office of the Recorder of Deeds of the District of Columbia as Instrument No. 2006021132 (the "Deed of Trust"), encumbering the land, including the improvements thereon and the appurtenances thereto, described as the Unit No. 1, Unit No. 2 and Unit No. 3 in the Bylaws for DC USA Condominium to which this Trustee's Joinder, Consent and Subordination is appended, with full authority from the beneficiary secured under said Deed of Trust as reflected in Appendix B-1 attached hereto, do hereby consent to the terms and conditions of the foregoing Bylaws, and covenants and agrees that the lien, effect and operation of said Deed of Trust be subject and subordinate to the effect and operation of the Bylaws, said Deed of Trust otherwise to remain unmodified and in full force and effect; provided that such consent and subordination shall not be construed as subordinating the terms and conditions of the Deed of Trust to the terms and conditions of the Bylaws or as deferring to the terms and conditions of the Bylaws in the event of any conflict, it being the intent that the terms and conditions of the Deed of Trust shall govern in any such event and that such consent and subordination shall be effective solely to the extent necessary to permit the creation of a condominium regime form of ownership.

**IN WITNESS WHEREOF**, Verdugo Trustee Service Corporation, has caused this instrument to be executed by Richard M. Fitzgerald, its Vice President, and does hereby appoint said Richard M. Fitzgerald as its attorney-in-fact for purposes of executing, acknowledging and delivering this instrument, for and on behalf of said corporation, all as of the day and year first hereinabove written.

**VERDUGO TRUSTEE SERVICE CORPORATION**

By:

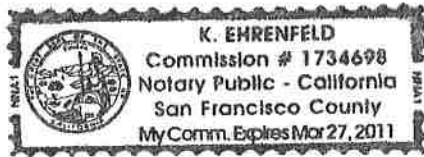
Name:  
Title:

*Richard M Fitzgerald*  
*VP*

California )  
San Francisco ) ss:

**BEFORE ME**, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Richard M. Fitzgerald, personally well known (or satisfactorily proven) to me to be the person whose name is subscribed to the foregoing and annexed Instrument, who, being by me first duly sworn, did depose and state that he is the Vice President and attorney-in-fact of Verdugo Trustee Service Corporation, which entity is a party to the foregoing and annexed Instrument, and that he, being duly authorized so to do, executed said Instrument on behalf of said entity and acknowledged the same as its free act and deed for the uses and purposes therein contained.

**WITNESS** my hand and official seal this 26 day of March 2008.



K. Ehrenfeld  
Notary Public  
[ Notarial Seal ]

My Commission Expires:

RECORDING	\$	426.00
SURCHARGE	\$	6.50
COPIES	\$	135.00
CERTIFICATION	\$	2.25

**APPENDIX B-1**

**BENEFICIARY'S AUTHORIZATION TO TRUSTEE**

On this 26<sup>th</sup> day of March 2008, Citicorp North America, Inc., Beneficiary under that certain Indemnity Deed of Trust, Assignment of Leases, Security Agreement, and Fixture Filing, dated February 15, 2006, securing Citicorp North America, Inc. ("Lender"), recorded on February 16, 2006, among the land records of the Office of the Recorder of Deeds of the District of Columbia as Instrument No. 2006021132 (the "Deed of Trust"), hereby authorizes Verdugo Trustee Service Corporation, Trustee, to execute the annexed Trustee's Joinder, Consent and Subordination for the purposes set forth therein.

IN WITNESS WHEREOF, Citicorp North America, Inc., has caused this instrument to be executed by Priya Jayachandran its Vice President, and does hereby appoint said Priya Jayachandran as its attorney-in-fact for purposes of executing, acknowledging and delivering this instrument, for and on behalf of said corporation, all as of the day and year first hereinabove written.

**CITICORP NORTH AMERICA, INC.**

By: [Signature]  
 Name: Vice President  
 Title: Priya Jayachandran

District of Columbia )  
 ) SS:  
 \_\_\_\_\_ )

Doc# 2008034084 Fees: \$569.75  
 03/31/2008 11:19AM Pages 60  
 Filed & Recorded in Official Records of  
 WASH DC RECORDER OF DEEDS LARRY TODD

**BEFORE ME**, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Priya Jayachandran, personally well known (or satisfactorily proven) to me to be the person whose name is subscribed to the foregoing and annexed Instrument, who, being by me first duly sworn, did depose and state that she is the Vice President and attorney-in-fact of Citicorp North America, Inc., which entity is a party to the foregoing and annexed Instrument, and that she, being duly authorized so to do, executed said Instrument on behalf of said entity and acknowledged the same as its free act and deed for the uses and purposes therein contained.

**WITNESS** my hand and official seal this 26<sup>th</sup> day of March 2008.

**ELSA ARAYA**  
 Notary Public, District of Columbia  
 My Commission Expires 09-14-2011

[Signature]  
 Notary Public  
 [ Notarial Seal ]

My Commission Expires:

**ELSA ARAYA**  
 Notary Public, District of Columbia  
 My Commission Expires 09-14-2011

MAR 31 2008

Records of Death, D.C.  
THIS IS TO CERTIFY THAT THIS IS A TRUE COPY  
Virginia Johnson  
Frank J. Lee

